TESIS DE DOCTORADO

CONCEPTUALIZATIONS OF THE INTERNATIONAL STUDENT IN INTERNATIONAL MIGRATION LAW, DIPLOMACY AND HIGHER EDUCATION ECONOMY: A TRANSATLANTIC PERSPECTIVE

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ABBREVIATIONS

AACRAO	American Association of Collegiate Registrars and Admissions Officers
ACE	American Council on Education
AEGEE	Association des États Généraux des Étudiants de l'Europe (English: European Students' Forum)
CIE	Confédération Internationale des Étudiants
CIEE	Council on International Educational Exchange
CFRFS	Committee on Friendly Relations Among Foreign Students
CFSP	Common Foreign and Security Policy
COR	Committee of the Regions
EAEC	European Atomic Energy Community
ECA	Bureau of Educational and Cultural Affairs (US State Department)
ECF	European Cultural Foundation
ECSC	European Coal and Steel Community
ECTS	European Credit Transfer System
EDC	European Defence Community
EEC	European Economic Community
EHEA	European Higher Education Area
EPC	European Political Cooperation
EU	European Union
GATS	General Agreement on Trade in Services
IAPP	International Academic Partnership Program (IIE)
IEA	International Education Act
IIE	Institute of International Education
IIRAIRA	Illegal Immigration Reform and Immigration Responsibility Act
ILO	International Labor Organization
IML	International Migration Law
INA	Immigration and Naturalization Act
ISM	International Student Mobility
NAFSA	National Association of Foreign Student Advisers
NAFTA	North American Free Trade Agreement
OECD	Organisation for Economic Co-operation and Development
PI	Partnership Instrument (European Union External Action)
SEVIS	Student and Exchange Visitor Information System
SUNY	The State University of New York
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UIS	UNESCO Institute for Statistics
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
US	United States
USCIS	United States Citizenship and Immigration Service
USIA	United States Information Agency

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RESUMEN

Las variadas formas de migración legal resultan cada vez de mayor importancia para la agenda política global, destacando el lugar que ocupa la movilidad internacional de estudiantes, tal como resulta del dato que la matrícula internacional de estudiantes internacionales se haya triplicado desde 1990.[1] Sin embargo, como señalan King y Raghuram,[2] pese a este rápido crecimiento del componente estudiantil en los flujos migratorios globales, el estudio de la migración/movilidad de los estudiantes internacionales se ha mantenido como un ámbito "relativamente inexplorado" en la investigación sobre las migraciones. Esta situación ha ido progresivamente cambiando en los últimos años. A medida que el papel y la importancia de la educación superior ha seguido aumentando, el estudiante internacional se ha convertido en un actor crucial en los distintos planos social, político y económico y, consecuentemente, en un tema de investigación cada vez más relevante. Aspectos tales como los datos sobre los flujos de movilidad, la demografía, los *push and pull factors*, y las experiencias y elecciones de los estudiantes al desplazarse forman parte del abanico de temas comprendidos en un área interdisciplinar en rápida expansión que atañe a diversos campos de estudio de las Ciencias Sociales y Jurídicas.

De forma particular, y a pesar de la apuntada relevancia de los estudiantes internacionales para diversas disciplinas académicas, así como de sus implicaciones en el ámbito político, se constata la ausencia de análisis exhaustivos en la materia en los ámbitos del Derecho internacional de las migraciones, la diplomacia y la economía de la educación superior. Con el propósito de contribuir a colmar esta laguna, esta tesis tiene como objetivo general estudiar críticamente la conceptualización específica de la que es objeto la figura del estudiante internacional en cada una de estas tres disciplinas y analizar de manera integrada tales conceptos. Por tanto, esta investigación no ha buscado construir un concepto nuevo de "estudiante - migrante", "estudiante - actor de la diplomacia cultural", o "estudiante - factor de la economía de la educación superior," sino que parte de elaboraciones ya existentes. Su aportación consiste pues en estudiar dichas categorizaciones desde una perspectiva transatlántica, analizando y evaluando de forma exhaustiva las complejidades de cada conceptualización, a fin de comprender mejor cómo se aborda esta figura multifacética en el ámbito de los Estudios internacionales. En suma, este trabajo no pretende ser "monolítico" sino analizar de manera conjunta tres conceptualizaciones distintas del estudiante internacional en el contexto particular de los Estados Unidos de América (EE. UU.) y la Unión Europea (UE).

Partiendo de este objetivo general, un primer objetivo específico de esta tesis ha sido el de examinar los problemas y retos que se plantean para definir al estudiante internacional, tomando como referencia la literatura científica más reciente. Dicho examen ha partido de un intento de clarificar qué se entiende por "estudiante internacional," ya que hay una amplia gama de situaciones, elementos y factores que hay que tener en cuenta a la hora de

[1] ICEF Monitor. (2015). The state of international student mobility in 2015. Retrieved from http://monitor.icef.com/2015/11/the-state-of-international-student-mobility-in-2015/. Accessed March 19, 2018.

[2] King, R., & Raghuram, P. (2013). International student migration: Mapping the field and new research agendas. *Population, Space and Place*, *19*(2). 127-137. Retrieved from https://www.researchgate.net/publication/260086021_International_Student_Migration_Mapping_the_Field_and_New_Research_Agendas. pp. 1-21.

definir este concepto. En este sentido el estudio de la movilidad de estudiantes utiliza distintos términos como el de "estudiante internacional" (*international student*) y "estudiante extranjero" (*foreign student*) y se organiza en función de diferentes criterios de clasificación, como el tipo de programa o la duración de la estancia en la Institución de acogida: estancias de larga duración orientadas a la obtención de un título (*long-term degree-seeking*) frente a las estancias de corta duración (*short-term study abroad*). Es precisamente esa diversidad de experiencias individuales reunidas bajo la denominación de "estudiante internacional" la que plantea la necesidad de cuestionar y desenredar críticamente este término y contextualizar su utilización tomando como referencia no sólo en la doctrina, sino también la práctica de las Organizaciones Internacionales y de los Estados.

Un segundo objetivo se corresponde con el de estudiar al estudiante internacional desde el punto de vista del Derecho internacional de las migraciones, ya que los estudiantes-migrantes pueden encontrarse en situaciones plurales dentro del amplio espectro que va desde la migración de carácter temporal a la permanente. Por esta razón, se ha analizado la dimensión jurídica de tales situaciones a través de los fundamentos y principios del Derecho internacional de las migraciones, prestando particular atención a los cambios y la particular evolución de las que han sido objeto dichas normas a nivel nacional y regional en el sector transatlántico.

Un tercer objetivo se centra en el examen de los estudiantes internacionales como actores de la diplomacia cultural. En efecto, en la medida en que los intereses e identidades de los actores no estatales inciden cada vez con mayor intensidad y frecuencia en la nueva distribución del poder político en un mundo interconectado,[3] el estudiante internacional ha ido ganando peso como medio para que los gobiernos promuevan y difundan sus políticas e identidades culturales en el exterior. Se plantea así la dicotomía entre la política del Estado y las acciones e intereses del individuo, dándose lugar a una dinámica crucial para comprender el papel y funcionamiento de los estudiantes internacionales dentro la evolución constante de las relaciones internacionales. De manera concreta, este proceso se estudia en relación con los Estados Unidos y la proyección de su imagen y valores en el extranjero. Igualmente, se analiza en el caso de una Organización internacional con las particularidades de la Unión Europea por lo que se refiere a la promoción de los objetivos de integración regional y, más tarde, de una identidad europea vinculada a los objetivos estratégicos del multilateralismo.

Un cuarto objetivo del trabajo ha consistido en estudiar cómo en un contexto de reducción progresiva de medios de financiación, el estudiante internacional se ha convertido en una fuente de ingresos para las instituciones de educación superior. Con este objetivo, la polaridad entre los planteamientos "idealistas" y "económicos" que caracterizan los flujos de estudiantes internacionales en el sector transatlántico se contextualizan sobre la base del discurso teórico existente. De esta manera, se constata que el estudiante internacional se ha instrumentalizado por las instituciones de educación superior para lograr objetivos económicos, tal como pone de manifiesto que las estrategias actuales de internacionalización y captación de estudiantes extranjeros de dichas entidades persigan

[3] Bolewski, W. (2007). *Diplomacy and international law in globalized relations*. Berlin: Springer. p.89

casi exclusivamente objetivos de rentabilidad económica. En un paso más, el trabajo plantea un enfoque diferente, pasando de lo descriptivo a lo prescriptivo, para formular una propuesta destinada a cambiar esta dinámica "economicista" y optimizar la capacidad del estudiante internacional para desempeñarse y actuar en un entorno global cada vez más complejo.

Por lo que se refiere a la estructura y metodología de esta investigación, esta tesis consta de cuatro capítulos. Partiendo de un capítulo introductorio, los otros tres se centran en una manifestación diferente de un fenómeno multifacético como es la conceptualización del estudiante internacional. Si bien cada uno de ellos es completo e independiente en cuanto al análisis realizado y conclusiones, los tres inciden en una serie de cuestiones que son recurrentes o están entrelazadas, como resulta del examen de un mismo fenómeno desde diferentes perspectivas. Este enfoque "no tradicional" se corresponde con un formato de "trabajos recopilados" que se refiere a varios trabajos que se presenta de forma conjunta "sobre un tema unificador con capítulos de apertura y cierre."[4] Su elección responde a la adecuación que ofrece para el examen de cuestiones multidisciplinares a través de análisis sustantivos "distintos pero coherentes" que "apoyan un tema singular." [5]

No obstante, hay que advertir que esta tesis doctoral no sigue estrictamente el formato anteriormente mencionado debido a la interdependencia inherente entre las cuestiones abordadas en los distintos capítulos que la integran. Así, el capítulo 1 tiene como función servir de marco introductorio, proporcionando información contextual que contribuye a una mejor comprensión de la investigación realizada en los capítulos posteriores desde una perspectiva metodológica y sustantiva distinta. De esta manera, los capítulos 2, 3 y 4 presentan cada uno un marco teórico propio y contienen un análisis basado en un paradigma de investigación interpretativa en función del cual los contextos sociohistóricos constituyen la referencia para entender y articular la pluralidad de análisis e interpretaciones de los distintos escenarios y cuestiones que suscita la conceptualización del estudiante internacional desde la perspectiva del Derecho Internacional de las migraciones, las Relaciones Internacionales, y la economía de las Instituciones de educación superior.

Fruto del análisis realizado, las conclusiones parciales a las que se llega en cada capítulo han servido para construir una serie de conclusiones generales. Una primera se refiere a la persistencia de inconsistencias y pluralidad de enfoques a la hora de determinar en la práctica quién debe ser considerado un estudiante internacional, pese a los intentos de incrementar y estandarizar la recopilación de datos por parte de los Estados y las Organizaciones Internacionales. Esta ausencia de definiciones unificadas en el tratamiento estadístico y cuantitativo de la movilidad internacional de estudiantes está en la base de las dificultades para conceptualizar al estudiante internacional en un contexto multidisciplinar. Si bien tal conclusión no resulta en si misma novedosa, su constatación resulta fundamental como punto de partida de la investigación y sirve para sentar las bases

[4] Munn, S. L., Collins, J. C., & Greer, T. W. (2014). The "Non-Traditional" Dissertation: An Autoethnography of Three Early Career Scholars. In *33rd National Research-to-Practice (R2P) Conference in Adult and Higher Education together with 2nd Annual Ball State University Adult, Higher*. p.139.

[5] Nehls, K. & Watson, D. (2016). Alternative Dissertation Formats: Preparing Scholars for the Academy and Beyond. DOI: 10.4018/978-1-5225-0445-0.ch004. p.45.

para el análisis de las cuestiones que se platean en cada uno de los tres ámbitos sustantivos de referencia.

Las dificultades derivadas de tales discrepancias definitorias respecto a quién constituye un estudiante internacional se ponen especialmente de manifiesto en el ámbito jurídico, tal como reflejan las diferencias en cuanto al tratamiento y los derechos que se reconocen a los estudiantes extranjeros en los países receptores. Ahora bien, puesto que el estudiante internacional constituye un tipo de migrante, le resultan de aplicación el Derecho Internacional de las migraciones y, dado que la búsqueda de formación en instituciones de educación superior es la característica determinante de tales migrantes, el acceso a la educación constituye el punto focal en dicho análisis. A este respecto, la Convención contra la discriminación en la educación de 1960 establece claramente una comprensión integral del Derecho a la educación, incluyendo dentro del mismo a la educación superior, tal como se concluye de la referencia a "todos los tipos y niveles de educación", y el acceso a la misma. De esta manera, si el origen nacional de una persona no puede impedir su acceso a todo tipo de educación y de cualquier nivel, se llega a una segunda conclusión: cuando la educación superior resulta inaccesible en el país de origen, el individuo debe tener el derecho de migrar para la realización efectiva del derecho a la educación, configurándose la vinculación entre ambos derechos como un principio esencial para fundamentar la migración de los estudiantes.

Una tercera conclusión se deriva del hecho de que la condición de estudiante internacional pueda superponerse a la de otro tipo de migrantes, como la de trabajadores por cuenta ajena o propia, de manera que tener en cuenta únicamente tal condición resulta insuficiente e inadecuado. Esta situación se pone claramente de manifiesto en el caso de las normas de EE. UU. en materia de inmigración y las dificultades que se plantean a los estudiantes internacionales para obtener el estatus de residente permanente. Así, el estudiante migrante tiene un estatus temporal que no brinda en si mismo la posibilidad de la residencia permanente, aunque pueda llegar a convertirse eventualmente en un inmigrante, pero a través de otra clasificación. Tal situación se deriva de la diferenciación en los EE. UU. entre las categorías de visados de "inmigrante" y "no inmigrante" que incide claramente en la situación de los estudiantes internacionales. Los visados para no inmigrantes se caracterizan por la ausencia de la intención de quedarse en los Estados Unidos permanentemente y son emitidos para visitas temporales, entre las que, además de los viajes de turismo, negocios, trabajo, se sitúan precisamente los viajes de estudio. En cambio, los visados de inmigrante son para personas que emigran a los Estados Unidos con idea de establecer allí su residencia permanente, lo que excluye en principio los estudiantes migrantes. Se pone así de manifiesto de manera muy clara las deficiencias y limitaciones que tal regulación lleva aparejadas con respecto a la elegibilidad y clasificación a efectos de su estatus inmigratorio.

Esta misma problemática se plantea en la UE en la que las tensiones a nivel nacional y supranacional sobre cuestiones de migración han sido siempre una constante. En este contexto, aunque la regulación de los estudiantes inmigrantes afecta de manera diferente a los ciudadanos de la UE que estudian en otros Estados miembros respecto a los estudiantes nacionales de terceros países, ambas situaciones suscitan la cuestión de limitar

la identidad del estudiante migrante a esa única dimensión, sin considerar otras posibles, como las de trabajador.

El Pacto Mundial para la Migración Segura, Ordenada y Regular de 2018, al tener como objetivo en el primer marco integral de migración la consecución de una mayor cohesión entre las distintas situaciones de la migración, puede ser un instrumento que contribuya a resolver las inadecuaciones existentes en el caso del tratamiento de la migración estudiantil. En este sentido, aunque el propio Pacto reitera y afirma la jurisdicción de los Estados en cuanto a la regulación de los procedimientos de entrada y residencia, plantea la necesidad de que las políticas de inmigración tengan en cuenta la pluralidad de situaciones en las que puede encontrarse el estudiante migrante como una figura multifacética en el Derecho internacional de la migración y que se vea reflejado con mayor precisión en las legislaciones internas y regionales.

En el ámbito de las relaciones internacionales, la ampliación del concepto de diplomacia ha fomentado el papel de los ciudadanos como instrumentos o actores de la diplomacia, una idea que es directamente aplicable a la influencia que los estudiantes internacionales pueden ejercer en el extranjero. En esta línea, si bien con algunas diferencias derivadas de las particularidades de cada situación, el estudiante internacional ha sido utilizado para la difusión de ideales culturales tanto por los Estados Unidos como por la propia Unión Europea. Así, en el primer caso se ha instrumentalizado para exportar una determinada imagen de los EE. UU. al servicio de los objetivos de la política exterior, y, en el segundo caso, para reforzar los objetivos de integración regional en Europa, y después, para promover una identidad común ligada a los objetivos estratégicos del multilateralismo.

Las diferencias entre cómo se ha formulado y desarrollado este rol en el sector transatlántico ponen de manifiesto una serie de contradicciones y tensiones a ambos lados del Atlántico, bien en la utilización del intercambio educativo como medio para promover la hegemonía mundial de los Estados Unidos con el pretexto de promover la interacción intercultural, bien en las tensiones de la integración europea en su avance hacia la identidad supranacional. Sin embargo, su análisis ha conducido a una cuarta conclusión de este trabajo: la constatación de que los estudiantes internacionales funcionan cada vez más como agentes autónomos a nivel internacional y que sus objetivos individuales muchas veces no coinciden con los objetivos de los gobiernos o instituciones que les "representan." En consecuencia, si en su momento el estudiante internacional podía considerarse un medio para que los gobiernos promovieran su agenda cultural, su papel se ha transformado gradualmente en el de un actor individual que opera de manera independiente en el ámbito de las relaciones internacionales. Por lo tanto, la posibilidad de instrumentalizar a los estudiantes internacionales para el cumplimiento de una determinada agenda exterior en el ámbito cultural o educativo resulta cada vez más difícil, ya que el estudiante internacional tiende a funcionar como un agente individual con unas motivaciones propias que, a su vez, marcan el contenido y la realización de tales agendas.

Por su parte, a medida que la financiación ha ido convirtiéndose en uno de los mayores retos de las Universidades, se plantea la conceptualización del estudiante internacional como impulsor económico en el campo de la educación superior. Se suscita así la

dicotomía inherente entre el planeamiento de la experiencia de los estudiantes internacionales como "un intercambio cultural idealizado" y la creciente importancia otorgada a los recursos económicos que se derivan de la internacionalización de la educación superior y, por tanto, de los potenciales ingresos que los estudiantes internacionales pueden proporcionar a las instituciones de educación superior. De esta manera, a medida que la retórica ideológica de la internacionalización ha pasado a un lugar secundario y que sus estrategias buscan objetivos económicos a través de medidas como las destinadas a intensificar la captación de estudiantes extranjeros, el estudiante internacional se ha convertido principalmente en una fuente de ingresos económicos. Frente a esta constatación, se materializa una quinta conclusión: partiendo de la concepción común y generalizada en la doctrina y la práctica de los estudiantes como consumidores, si el titulado universitario es en realidad el "producto," se debe instar a que las Instituciones de educación superior lleven a cabo un cambio de paradigma. De esta manera, en lugar de entender a los estudiantes internacionales principalmente como un medio para obtener recursos económicos, las instituciones de educación superior deberían considerarlos como agentes para ampliar y enriquecer el entorno social e institucional. Por tanto, el objetivo no debería ser simplemente aumentar el número de estudiantes extranjeros, sino facilitar la integración y promover programas que permitan una mayor interacción intercultural, como medio para formar individuos que puedan desempeñarse mejor en un entorno profesional complejo y global.

La finalización de esta tesis doctoral ha coincido con la irrupción de la pandemia generada por el COVID-19, dando lugar a un escenario totalmente nuevo para los estudiantes internacionales. Las consecuencias más inmediatas de esta crisis sanitaria se han traducido en una suspensión de las clases presenciales y en el recurso a la utilización de aulas y herramientas virtuales por las instituciones educativas a nivel mundial, dando lugar a nuevas realidades, tales como un aumento de "la movilidad virtual" y un novedoso entendimiento de esta. La *addenda* al final del este trabajo hace referencia a esta inédita situación para poner de relieve el punto de inflexión en el análisis hasta ahora realizado y su repercusión en futuras investigaciones sobre los estudiantes internacionales.

I. PREFACE

This research is the culmination of a personal trajectory, a coming together of longstanding interests, professional experience, and academic pursuits with the desire to contribute to an increasingly relevant, interdisciplinary field to which I find myself inherently linked. As an undergraduate student of industrial and labor relations in the US, labor and employment law, the study of global labor movements, as well as the politics and policies of the Global North were a focus. As a student, I was consistently drawn to the plight, experiences and challenges of those who had left their country of origin to reside somewhere else for the purposes of work. After university, I would spend time traveling before returning to the US and taking a job at an immigration law firm, gleaning first-hand knowledge of immigration regulations and visa procedures. Later, with language acquisition as the goal, I moved to Spain to experience living and working outside of the US. This would lead to graduate work at the Universidad de Santiago de Compostela, a Masters in International Studies, and my subsequent enrollment in the doctoral program with regular migration in the transatlantic sector[6] as my chosen area of research.

During the project ideation phase of this dissertation, I was struck by the knowledge that international students have become the "fastest-growing group" among all migrant categories, including labor migrants, those engaged in family reunification, and refugees.[7] Additionally, the breadth of available literature on international students cuts across a wide variety of academic disciplines, incorporating a vast array of subjects, theories and concepts, many of which intersect with my own academic training and inclinations in the social sciences. There was indeed another significant contributing factor to my interest in pursuing the study of International Student Mobility (ISM): having had the privilege of higher education study in both the United States and the European Union, I myself am an international student. In life there are endeavors we pursue, circumstances we actively seek out, and there are those that find us. Through a serendipitous series of events that merged the personal, the professional and the academic, I might argue that the field of ISM found me.

This research was borne out of three interconnected ideas from different academic disciplines within the social sciences that together seek to further etch out the figure of the international student. The distinctive nature of this work reflects my unique background, knowledge and perspective, with the overarching structure and framework modeled after alternative dissertation formats more often seen in US higher education. My understanding of and familiarity with more flexible dissertation models developed in my second year as a doctoral student during my time as Visiting Scholar with the Political Science and International Relations Department at The State University of New York at New Paltz. This format was chosen as a more appropriate way to address a multidisciplinary subject matter with three distinctive yet related discussions that further a shared theme. Thus,

[6] While "transatlantic" can be broadly used to refer to countries on both sides of the Atlantic Ocean, for the purposes of this dissertation, the transatlantic sector will mean the United States and the European Union.
[7] Riaño, Y. & Piguet, E. (2016). International Student Migration. Oxford Bibliographies. DOI: 10.1093/OBO/978 0199874002-0141

while stylistic elements from traditional Spanish theses have influenced this dissertation, the format and rationale go beyond the conventions of the field of legal and social sciences in Spain. This extends to the bibliography, which is comprised predominately of works in English, since much of the available literature on the subject matter, specific to the US and the EU, has been published in English. Bibliographic sources are cited in APA style, as it is understood to be one of the most widely used referencing styles in the social sciences and education fields internationally. However, in an effort to facilitate the reading of and honor the citation and formatting guidelines where this dissertation is being submitted and defended, the footnotes follow the classic Latin citation system commonly used in the legal and social sciences in Spain.

On a final note, I would be remiss to not address why this research has been set in a transatlantic context, each of the substantive chapters looking at the United States and the European Union, sometimes side by side, sometimes intertwined. The rationales for this decision are threefold. First, global flows of international students are predominately oriented towards study in the United States and countries in the European Union. While other countries and regions of the world experience and participate in ISM as well, the volume of mobility to the US and the EU, and the research literature that accompanies it, allows for a richer landscape of analysis when conceptualizing the international student. Second, considering the case of a national government alongside that of a supranational body facilitates a more multidimensional vision when contextualizing the diverse conceits of the international student, highlighting the different complexities and nuances present in each of these realms. Lastly, in keeping with the personal forces at work that have driven my interest in this line of research, the transatlantic sector is my own frame of reference. I am a US citizen, born and raised in the United States, I hold EU citizenship (Irish nationality) by way of my ancestors, and I am a permanent resident in Spain, having lived here for the past several years as I complete my graduate studies. It is sometimes the natural desire to understand one's own context that helps determine the tenor of an undertaking such as this.

II. INTRODUCTION

The varied forms of legal migration have become increasingly more relevant to the current global political climate. International student mobility represents an important sector of legal migration, with reports indicating that global international student enrollment has more than tripled since 1990.[8] However, as King and Raghuram[9] noted, "despite rapid growth in the student component of global migration flows, the study of international student migration/mobility is a relatively neglected field in migration research." In the years that followed, this has changed. As the role and importance of higher education in achieving diverse social, political and economic goals has continued to grow, the international student has become a crucial actor on various planes and an increasingly in-demand subject of study. Data on student mobility flows, demographics, push and pull factors, and student perceptions and decisions form a part of the breadth of subjects addressed in this rapidly expanding area that traverses diverse fields of study.[10]

Despite the relevance of international students to various academic disciplines and the important implications for policy, comprehensive analyses of the international student

[8] ICEF Monitor. (2015). The state of international student mobility in 2015. Retrieved from http://monitor.icef.com/2015/11/the-state-of-international-student-mobility-in-2015/. Accessed March 19, 2018.

[9] King, R., & Raghuram, P. (2013). International student migration: Mapping the field and new research agendas. *Population, Space and Place*, *19*(2). 127-137. Retrieved from https://www.researchgate.net/publication/260086021_International_Student_Migration_Mapping_the_Field_and_New_Research_Agendas. pp. 1-21.

[10] It should be noted that there are several prominent scholars across different academic disciplines such as education, sociology and geography, who have contributed significantly to the field of ISM, and whose contributions have worked collectively to develop and expand on key concepts. These scholars include Hans de Wit [De Wit, H. (2002). *Internationalization of higher education in the United States of America and Europe: A historical, comparative, and conceptual analysis*. Greenwood Publishing Group.]; Philip Altbach [Altbach, P. G. (2004). Higher education crosses borders: Can the United States remain the top destination for foreign students?. *Change: the magazine of higher learning*, 36(2), 18-25.]; Ulrich Teichler [Teichler, U. (1996). Student mobility in the framework of ERASMUS: Findings of an evaluation study. *European Journal of Education*, 31(2), 153-179.]; Allan M. Findlay [Findlay, A. (2011). An assessment of supply and demand-side theorizations of international student mobility. *International Migration* 49: 162–190.]; Russell King [King, R. (2003). International student migration in Europe and the institutionalisation of identity as "Young Europeans." In: *Migration and immigrants: between policy and reality*. Doomernik, J. and Knippenberg, H. (eds.). Aksant Academic Publishers, Amsterdam. pp. 155-179.]; Parvati Raghuram [Raghuram, P. (2013). Theorising the spaces of student migration. Population, Space and Place, 19(2), 138-154.]; Rachel Brooks [Brooks, R. and Waters, J. (2011) *Student Mobilities, Migration and the Internationalization of Higher Education*. Basingstoke, Palgrave Macmillan.]; Anna Wells [Wells, A. (2014). International student mobility: Approaches, challenges and suggestions for further research. *Procedia-Social and Behavioral Sciences*, 143, 19-24.]; Christof Van Mol [Van Mol, C. (2011). The influence of European student mobility on European indentity and subsequent migration behaviour. In *Analysing the consequences of academic mobility and migration/Dervin, Fred [edit.]* (pp. 29-50).]; Rahul Choudaha [Choudaha, R. (2017). Three waves of international student mobility (1999-2020). *Studies in Higher Education*.Vol. 42, No. 5, 825–832.]; and Kemal Gürüz [Gürüz, K. (2011). *Higher education and international student mobility in the global knowledge economy*: Revised and updated second edition. SUNY Press.], among others. The greater majority of prominent studies in this field with a focus on the US and the EU have been published in English. In Spain, important works within the field of ISM relevant to the transatlantic sector have been apportioned by Nuria del Álamo Gómez [del Álamo Gómez, N. (2016). Los estudiantes extranjeros en España. La movilidad internacional por razones de estudio. Doctoral Dissertation.]; Sarah Fernández López [Fernández López, S. & Romero Castro, N. (2002). Los movimientos internacionales de estudiantes como fuente de ingresos para las instituciones de educación superior. Novos desafios na Gestão, Innovação ou renovação?: XII Jornadas Luso-Espanholas de gestão científica, Vol. 6 (Organização de Empresas II). ISBN 972-9209-86-3. pp. 365-372.]; as well as Carlos Rodríguez González and Ricardo Bustillo Mesanza [Rodríguez González, C., Bustillo Mesanza, R., & Mariel, P. (2011). The determinants of international student mobility flows: an empirical study on the Erasmus programme. *Higher education*, 62(4), 413-430.], among others.

within certain fields of research, specifically international migration law, diplomacy and higher education economy, is lacking. Thus, the central aim of this dissertation is to critically examine three specific conceptualizations of the international student from the aforementioned fields to consider the ways in which these diverse conceits are understood. This research does not purport to have conceived of the "student migrant," the international student as an actor of cultural diplomacy, or the international student as an important factor in the economics of higher education. Instead, it has sought to flesh out these concepts from the specific perspective of the transatlantic sector, comprehensively unpacking and assessing the complexities of each conceptualization for the first time, so as to better understand how international students are treated and portrayed across these particular academic disciplines. This work is not monolithic, but a way to bring together three unique conceptualizations, analyzed in the context of the US and the EU.

The notion of conceptualizing the international student has meant building off of existing constructs while developing them further, addressing meaningful understandings or characteristics from a particular vantage point. In this regard, the first chapter will present the challenges and considerations of defining the international student in the current literature, since how research has endeavored to define the international student has led to different conceptualizations of the same. Then, the subsequent chapters will each address a distinct conceit of the international student, the first conceptualization situated in international migration law, the second in cultural diplomacy, and last in higher education economy. While chapters 2, 3 and 4 differ in their individual structure, a theoretical basis, literature review and historical context are presented in each, as well as an analysis from the perspective of the United States and the European Union.

To this aim, the second chapter will address the student migrant in international migration law. Student migrants encompass various immigration classifications and thus find themselves on a spectrum between temporary and permanent migration. Since the international student has not yet been fully developed through the lens of international law, this chapter will examine the legal nature of the identity and experience of the international student through the structures and procedures in place. This research will explore the legal structures that govern international migration law, the theoretical basis for such frameworks, how they have evolved, and how they been affected by policy trends. It will look at the figure of the international student within this architecture and analyze the student migrant on a spectrum of national, regional and international regulations in the transatlantic sector.

The third chapter will deal with the international student within the realm of cultural diplomacy. As the interests and identities of non-state actors are increasingly participating in the new distribution of political power in an interconnected world,[11] the international student has represented a means for national governments to spread their aims of cultural ideals. This will be seen through the projection of the image of the United States abroad, or, in Europe, the furthering of regional integration objectives and later a common European identity linked to the strategic aims of multilateralism. This chapter will

[11] Bolewski, W. (2007). *Diplomacy and international law in globalized relations*. Berlin: Springer. p.89

examine the degree to which international students have been used as conduits of cultural diplomacy, and the ways in which they have served a purpose within this realm. A central theme will be how the individual often functions independently from the State and its objectives, which is crucial to understanding the central role of international students in the ever-evolving nature of international relations.

The fourth chapter addresses how the international student has evolved as a unit of economic gain for institutions of higher education. The polarity between idealistic and economic dimensions that characterize the movement of international students in the transatlantic sector will be contextualized within existing theoretical discourse. It will be argued that the international student has become an instrument used by institutions to achieve economic objectives in the higher education sector. This contention relies on the assertion that current strategies of internationalization almost exclusively support a goal of profitability. The discussion of this final conceptualization takes a different approach, extending the descriptive to the prescriptive, laying out key considerations thematically, but also suggesting what should be done to shift this increasingly fraught dynamic.

III. STATEMENT OF PURPOSE

The objective of this dissertation is to consider the figure of the international student in the United States and the European Union across three different academic disciplines: from an international migration law perspective, as an agent of cultural diplomacy within international relations, and as an instrument of higher education economy. This work endeavors to address the concept of the student migrant, and how student migrants are regulated within the international legal framework; the international student as a cultural diplomat, historically and presently; as well as the international student as a crucial economic commodity for institutions of higher education.

Each chapter will introduce individual research questions, with distinct iterations of the international student and relevant discourse presented in each of these areas, demonstrating the multidisciplinary and far-reaching nature of the study of ISM. The ways in which such diverse conceits of the international student can conflict, intersect, but also exist separately in relation to one another will be highlighted, taking into account the different actors and interests at play. Ultimately, the entirety of this work will consider how these conceptualizations at once occupy the same space, but often differ greatly in discourse and understanding. Still, each remains increasing salient in this day and age, both impacting and impacted by policy decisions, their worth invaluable to a more integrated, transdisciplinary understanding of ISM.

IV. METHODOLOGY

Each chapter focuses on a different manifestation of a single, multifaceted phenomenon: how the international student is conceptualized. While each can stand alone in its arguments and findings, certain themes are recurrent or interwoven throughout, as the same subject is analyzed from different disciplinary perspectives. This "non-traditional" approach echoes a "collected papers" format, which refers to several works presented together "on a unifying topic with opening and closing chapters."[12] It is also referred to as the "multiple article format" and is "the most common alternative" to the traditionally structured dissertation.[13] This approach is arguably a more suitable way to present a multidisciplinary subject matter with three "distinct yet cohesive" texts that "support a singular theme."[14] [15]

This dissertation, however, jettisons some conventionally held ideas as it does not strictly follow the aforementioned format either, mainly due to an inherent interdependence between chapter discussions and themes, as well as the inclusion and function of the first chapter. Chapter 1 primarily serves as an introductory discussion, providing contextual information that contributes to a better understanding of the research carried out in the subsequent chapters. Thus, each succeeding chapter builds off of the information discussed in chapter 1 to address a distinct conceptualization of the international student.

Chapters 2, 3, and 4 each present a theoretical framework, a review of the literature, a historical context, and an analysis tailored to the United States and the European Union. Due to the nature of the phenomena under consideration, an interpretive research paradigm was pursued in each, with socio-historic contexts utilized to reconcile the various understandings and interpretations of the diverse scenarios and themes presented. Both chronological and thematic approaches were employed, with a priori reasoning and deductive conclusions reached.

Each chapter presents its own findings that underscore the important points introduced and developed therein, while a final general conclusion stresses the overall contributions of this work. This dissertation is by no means an exhaustive review of all the available abstractions of the international student, nor does it purport to offer an all-inclusive list of definitions or approaches connected to ISM research. Instead, it seeks to demonstrate the diversity of the lexicon and concepts at hand, and bring together certain key issues pertaining to conceptualizations of the international student across three particular academic disciplines.

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[12] Munn, S. L., Collins, J. C., & Greer, T. W. (2014). The "Non-Traditional" Dissertation: An Autoethnography of Three Early Career Scholars. In *33rd National Research-to-Practice (R2P) Conference in Adult and Higher Education together with 2nd Annual Ball State University Adult, Higher*. p.139.

[13] Thomas, R. A., West, R. E., & Rich, P. (2016). Benefits, challenges, and perceptions of the multiple article dissertation format in instructional technology. *Australasian Journal of Educational Technology*, *32*(2).

[14] Nehls, K. & Watson, D. (2016). Alternative Dissertation Formats: Preparing Scholars for the Academy and Beyond. DOI: 10.4018/978-1-5225-0445-0.ch004. p.45.

[15] Limitations to this format can include a lack of a "set procedure" to follow, which can be problematic when trying to delineate how to proceed, as well as the fact that there is sometimes "difficulty in identifying the aim of the completed dissertation" when looking globally at the "papers" together. Munn et al. 2014 op. cit. p.141

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CHAPTER 1 DEFINING THE INTERNATIONAL STUDENT: AN INTRODUCTION TO KEY CHALLENGES AND CONSIDERATIONS

1.1 INTRODUCTION: TOWARD A UNIFIED DEFINITION

The starting point of this inquiry will be to identify what is meant by the term "international student." Inherent in determining the parameters to be taken into consideration when defining this concept is the acknowledgement of the wide range of individuals and factors involved. In fact, "the diversity of experiences gathered together under the term 'international students' suggests that we need to critically interrogate not only the term 'student' but also the word 'international.'"[16] It is necessary to both untangle and contextualize this designation.

The international student can first be situated in the field of education, and more specifically, *higher education*. Higher education refers to "all post-secondary education, including public and private universities, colleges, training institutes, and vocational schools."[17] Within higher education, *academic mobility* delineates the students and teachers traveling to another institution inside or outside of their country of origin to teach or study for a time. While international movement for study purposes has a long historical foundation, the field of international student mobility in research literature has only been gaining traction in the past several decades. There still seems to be a lack of shared understanding of the various terms within international student mobility. The absence of a unified definition of international students, along with a deficiency in reliable and consistent national data on mobility, complicates data collection and reporting on international student flows.[18]

One commonly held definition of the internationally mobile student is someone who has "crossed a national border in order to study or to undertake other study-related activities for at least a certain unit of a study program or a certain period of time in the country they have moved to."[19] Research literature point outs that this definition does not address differences between students who go abroad as part of their home study program to earn credits towards the completion of their home degree, or "credit mobility," and students who go abroad pursuing a degree entirely at a foreign institution, deemed as "degree mobility."[20] [21] [22] The former is often discussed as "programme mobile students," or those

[16] King & Raghuram 2013 op. cit. p.5

[17] The World Bank. (2017). Tertiary Education. Retrieved from http://www.worldbank.org/en/topic/tertiary education#what_why. Accessed January 1, 2019.

[18] De Wit, H. (2008). The Dynamics of International Student Circulation in a Global Context. Presentation, AIEC Conference 2008. Retrieved from http://aiec.graydesign.com.au/uploads/pdf/deWit_Wed_1140_GH.pdf. Accessed February 14, 2019.

[19] Richters, E., & Teichler, U. (2006). Student mobility data: Current methodological issues and future prospects. *EURODATA: Student mobility in European higher education*. p. 78-95.

[20] Ibid. p. 84

[21] King, R., Findlay, A., Ruiz-Gelices, E., and Stam, A. (2004). International Student Mobility. HEFCE Issues Papers 2004/30. Bristol: Higher Education Funding Council for England. p. 5-12.

[22] King, R., Findlay, A., & Ahrens, J. (2010). International student mobility literature review. Report to HEFCE, and co-funded by the British Council, UK National Agency for Erasmus. pp.1-54.

who study in another country with the "support of mobility programmes" through a department, institution, or on the national level (such as The Erasmus Programme).[23] The latter is often referred to as "free movers" or those who travel through their own initiative.[24]

Furthermore, there are a growing number of students participating in virtual mobility, in which students from different countries study online without leaving their home country. This includes students who follow a degree program in their own country, delivered by foreign providers, or "students who follow completely or mostly a degree program on the basis of a joint or double degree between a national and a foreign provider."[25] Students participating in virtual mobility can complicate reporting statistics as their inclusion, or lack thereof, varies across different national contexts.

Other oft-used definitions are provided by the UNESCO Institute for Statistics (UIS) and the Organisation for Economic Co-operation and Development (OECD). The UIS defines *international (or internationally mobile) students* as "those who have crossed a national or territorial border for the purpose of education and are now enrolled outside their country of origin."[26] OECD defines international students as those who "received their prior education in another country and are not residents of their current country of study." It stipulates that when data on international students is not available, "*foreign students* – students who are not citizens of the country in which they study – can be used as a proxy,"[27] and the OECD Glossary of Statistical terms defines foreign students as those who "do not hold the citizenship of the country for which the data are collected." The glossary itself goes on to explain that this categorization "may give rise to inconsistencies resulting from national policies regarding naturalization of immigrants," as well as concerning country-to-country differences between foreign students and those holding permanent residence status. This causes a variance between countries where naturalization procedures are stricter and those where obtaining citizenship is less stringent.[28]

In fact, several countries, including the US, France and Canada, make no distinction between "foreign" and "international" students. When the distinction is made, however, it can be parsed out in the following manner: the former refers to those who do not hold the citizenship of the country where they are studying.[29] They are simply non-citizens at institutions outside their home country and "have not necessarily crossed a border to study."[30] [31] International students, however, are those who have crossed a national or

[23] Richters & Teichler 2006 op. cit. p. 94
[24] Ibid. p. 94
[25] De Wit 2008 op. cit. (no pagination)
[26] UNESCO. (2018). UNESCO Glossary: International (or internationally mobile) students. Retrieved from http://uis.unesco.org/en/glossary-term/international-or-internationally-mobile-students. Accessed January 1, 2019.
[27] OECD. (2019). International student mobility (indicator). doi: 10.1787/4bcf6fc3-en. Accessed on 16 February 2019.
[28] OECD. (2001). OECD Statistics Directorate. Retrieved from https://stats.oecd.org/glossary/detail.asp?ID=1052. Accessed January 2, 2019.
[29] Ibid. (no pagination)
[30] Weibl, G. (2014). *International Student Mobility and Internationalisation of Universities - The role of serendipity, risk and uncertainty in student mobility and the possible development of cosmopolitan mindset and identity through knowledge transfer and intercultural competence. Employability, students' future mobility aspirations and the EU's support of international student mobility* (doctoral dissertation). University of Canterbury.p.29

territorial border for educational objectives and are now enrolled outside their home country. Their aim is "to study or to undertake other study related activities, for at least a certain unit of a study programme or a certain period of time, in the country to which they move."[32] The legal status of these individuals including "dual nationalities, changes of citizenship, or foreigners since birth," is an essential element intertwined with, and "further complicating," these definitions.[33]

Understanding the diverse and complex considerations that underlie defining this term is fundamental when attempting to contextualize the figure of the international student across different disciplines. These are some of the essential elements to scrutinize when moving forward with this analysis. Addressing relevant discourse and the different factors at play when discussing international student mobility both enriches and adds dimension to this examination. Thus, in keeping with the foundational research literature and prominent lines of study in ISM, for the purposes of this dissertation the term *international student* will be understood as one who has crossed a national border to fulfill educational objectives, and is subsequently matriculated outside their home country. Thought of as the more widely used term across different national contexts, for the purposes of this research, it can be understood as the more versatile and inclusive designation.

1.1.1 On Data Collection

The reliability of data on student mobility, its motivations and its impacts, is an issue, as noted by several researchers. Within the field of ISM "it is difficult to evaluate the scope, the relevance and quality of research unless the particular type of mobility under investigation is precisely and explicitly defined."[34] Enrollment statistics are reported in different capacities as they relate to different countries and entities: short-term study abroad or exchange program students, long-term degree seeking students, and virtual students, among others. Since "national agencies collect data in different ways and according to different definitions" comparing international enrollment statistics can be difficult and is "often inaccurate or misleading."[35] Statistics collected by individual countries are reported by supranational organizations such as OECD or UNESCO. They often use the nationality of students as a "measure of mobility," but "discrepancies stand in the way of shared readings of the statistical data, weaken comparability of findings and decrease reliability of ISM as a research field."[36] Thus, the understanding of trends in global higher education is challenged by the inconsistencies of student mobility analyses between countries. This not surprisingly poses problems when examining the contrast in international student mobility.

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[31] OECD. (2011). Education at a Glance 2011: OECD Indicators. Retrieved from http://www.oecd.org/education/skills-beyond school/educationataglance2011oecdindicators.htm. Accessed January 15, 2019.
[32] Kelo, M., Teichler, U., & Wächter, B. (2006). Toward improved data on student mobility in Europe: Findings and concepts of the Eurodata study. *Journal of Studies in International Education*, *10*(3), 194-223.
[33] Weibl 2014 op. cit. p. 29
[34] Wells, A. (2014). International student mobility: Approaches, challenges and suggestions for further research. *Procedia-Social and Behavioral Sciences*, *143*, 19-24.
[35] Clark, N. (2009). What Defines an International Student? A Look Behind the Numbers. Retrieved from https://wenr.wes.org/2009/09/wenr-september-2009-feature. Accessed January 1, 2019.
[36] Wells 2014 op. cit. p. 20

Accordingly, the UNESCO Institute for Statistics and the OECD have attempted to standardize related terms in an effort to better gather and assess academic mobility statistics. This has resulted in the distinction, previously cited, that has been made between the international student and the foreign student, "in a bid to encourage national agencies to standardize their data along similar lines."[37] This is exhibited by Figure 1, which outlines select definitions of student mobility terms for eight countries, including the US, certain EU countries, and Canada. It illustrates that varied classifications cause inconsistencies and confusion in the context of individual national policies, including in the transatlantic sector, and, thus, issues remain.

Figure 1. Student Mobility Definitions for Select Countries in the Transatlantic Sector

	Inbound/ International Student	Foreign Student	Outbound Student
United States	Individuals studying in the United States on a non-immigrant, temporary visa that allows for academic study at the post-secondary level. Immigrants, permanent residents, citizens, resident aliens ("Green Card" holders), and refugees are excluded from this definition. These students include both degree and non-degree students.	The United States does not differentiate between foreign and international students.	United States students (citizens and permanent residents) who are enrolled in US higher education institutions, who study abroad for a short period of time, and then return to their home institutions in the United States to complete their degrees.
Canada	A temporary resident who has been approved by an immigration officer to study in Canada. International students do not need a study permit for courses of six months or less. Every foreign student must have a student authorization, but may also have been issued other types of permits or authorizations.	Canada does not differentiate between international and foreign students.	Canadian students pursuing a full-degree abroad as reported by the UNESCO Institute for Statistics. Canada does not have national data for students who participate in short term education abroad experiences as part of their Canadian degree.
Spain	The Ministry of Education, Culture, and Sports, Spain uses the UNESCO, OECD, and Eurostat (UOE) definition for internationally mobile students prioritizing prior education and usual residence to define internationally mobile students. This encompasses all individuals (regardless of nationality) crossing borders into Spain for educational purposes.	A foreign student is a student with a nationality other than Spanish pursuing higher education in Spain regardless of residency status.	Students enrolled in Spanish higher education institutions who pursue exchange or short-term education abroad.

[37] Clark 2009 op. cit. (no pagination)

Denmark	An international full-degree student is a student who has moved to Denmark for the purpose of studying.	A foreign student is a student holding a foreign citizenship, but who has resided in Denmark for more than a year prior beginning his or her studies. These students are not considered international students.	A full-degree outbound student is a student who receives the Danish study abroad grant. An exchange outbound student is a student who participates in an exchange visit of at least three months at a higher education institution abroad.
France	The Ministry of Education, Ministry of Higher Education and Research, France defines an international student as an individual with a foreign citizenship enrolled in a program at a French higher education institution for at least one year to receive an officially approved national degree or university diploma (full-degree/qualification). These students include non-French citizen legal residents of France and those who received their secondary diploma in France. France awards both short-stay student visas (three months) and long-stay student visas that are renewable with a residence permit (one year).	France does not differentiate between international and foreign students.	A French student who pursues a full-degree in another country. The definition excludes language study abroad or short-term/quarterly exchanges.
Germany	The Federal Statistical Office, Germany uses a combination of citizenship and prior country of education for defining their two international student categories: (1) Bildungsauslaender (non-resident students), including students with a foreign citizenship who gained their higher education entrance qualification at a foreign school (including German schools abroad) and/or complemented their foreign school qualifications by attending a German Studienkolleg (preparatory course for higher education admission). Student visa and length of stay are not relevant. (2) Bildungsinlaender (non-citizen students), including students with a foreign citizenship who gained their higher education entrance qualification or completed their secondary level education in Germany school or who passed a Gifted Students Test or an Aptitude Test in Germany. Prior to 2014/15, all International Students in Germany data reflect both Bildungsauslaender and Bildungsinlaender student enrollments.	Bildungsinlaender (non-citizen students)	German students enrolled at a higher education institution in another country.

Sweden	An individual who crosses national borders into Sweden to pursue education. The term is divided into two categories: (1) Exchange students are persons taking part in an organized exchange program, and (2) Free movers, including persons with residence study permits entering Sweden less than two years before beginning their studies; persons entering Sweden less than six months before starting their studies; and persons in the national student database without a national registration number. Only students enrolled in degree/qualifications programs or are receiving credits for a degree back at their home institution are included in Sweden's definition of an international student.	Sweden does not differentiate between international and foreign students.	Outbound student's Swedish students pursuing degree/qualifications abroad or those participating in for-credit short-term or exchange programs for credit back at their institution in Sweden.
Finland	A degree/qualification student is a student with a foreign nationality pursuing a full-degree from a higher education institution in Finland. This includes foreign students and graduate and post-graduate students. A study abroad/non-award student is an international student in Finnish higher education who is participating in study periods and trainee placements for at least three months. These activities count towards the exchange student's degree at his/her home university (credit mobility).	A foreign student is a higher education student who does not hold a Finnish citizenship including students who are legal residents of Finland.	A degree/ qualification student is a Finnish individual who receives student financial aid from the government (Social Insurance Institution) to pursue a full-degree undertaken at a foreign institution. A study abroad/non-award study student is a student who participates in educational activities abroad that count towards his/her degree in Finland (this includes internships, etc.).

Source: Institute of International Education. (2019). Project Atlas: Infographics and Data. Retrieved May 05, 2019, from https://www.iie.org/Research-and-Insights/Project Atlas/Explore-Data

The country definitions outlined in Figure 1 were compiled from information provided by the Institute of International Education (IIE),[38] one of the leading providers of research and statistics on international student movement. *Project Atlas,* started in 2001 through IIE efforts, is one such global research initiative that brought together more than

[38] The IIE is a US founded nonprofit established at the end of WWI that has focused predominately on international student exchanges and aid through the creation of study programs and training for students, educators and professionals (Institute of International Education, 2013). The IIE publishes their Open Doors Report annually, offering data and trends on international students in the US and US students abroad.
Institute of International Education. (2013). A Brief History of IIE. Retrieved from https://web.archive.org/web/20140205165423/http://www.iie.org/Who-We-Are/History. Accessed April 26, 2018.

30 international partners, including government institutes and research organizations. The project disseminates comparable student mobility data, conducts studies on academic migration, and provides workshops and research seminars aimed at strengthening the collection of mobility data. (Eurostat[39] also provides student mobility statistics for the European Union, but it relies on individual country reporting that uses different definitions, is often incomplete or missing, and only offers compiled data from 2013 on.[40])

1.1.2 Differing Types of Mobility

There are two principal categories of student mobility: diploma (or degree) mobility, i.e. movement for an entire program of study, and credit mobility, which is for part of a program, usually in the form of an exchange.[41] The two main types can also be described as longer-term "degree-seeking students" or "short-term 'study abroad' students (credit-earning or otherwise)."[42] Length of study in another country presents important distinctions between programs and, consequently, student experiences. Short-term study abroad, less than a year, is usually developed and handled through a university program in which students travel to a foreign country for time and then return to complete their studies at the home institution. A good example of this would be an Erasmus exchange or a US semester-long study abroad venture. "In the field of credit mobility, a Partner-Country university and a Programme-Country university can set up an inter-institutional agreement, enabling their students to study up to 12 months abroad at the host university, ensuring that all obtained grades and credits will be recognised by the home university."[43] An additional form of international study includes more informal, short-term trips, like summer school or a class trip abroad.[44] Many students prefer short-term study since bureaucratic concerns are often handled for them through the program, and many diverse opportunities are now available.

Degree-related international student mobility is still the most dominant form of cross-border education.[45] As mentioned, this type of mobility is longer in duration, and is applicable when a student studies at a foreign university for an entire program, such as towards a bachelor's or master's degree. While degree-related international study entails a longer period spent in another country, often, international students return to their home country once their degree is completed. Differing motivations affect student decisions, with "economic and professional factors" cited as draws to stay in the country of study, while "personal and societal factors" can influence students to return to their home

[39] Eurostat compiles and supplies statistical information for the European Union and its various institutions on a wide range of subjects.
[40] Eurostat. (2019). Mobile students from abroad enrolled by education level, sex and country of origin. Retrieved from http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=educ_uoe_mobs02&lang=en. Accessed January 21, 2019.
[41] Junor, S., & Usher, A. (2008). Student Mobility & Credit Transfer: A National and Global Survey. *Educational Policy Institute (NJ1)*. p. 3-6.
[42] De Wit, H., Ferencz, I., & Rumbley, L. E. (2013). International student mobility: European and US perspectives. *Perspectives: Policy and practice in higher education*, *17*(1), 17-23.
[43] National Erasmus Office in Kyrgyzstan. (2019). Retrieved from http://erasmusplus.kg/en/for-heis/key-action-1/difference_between_icm_and_joint_degree/. Accessed February 20, 2019.
[44] King & Raghuram 2013 op. cit. p. 4
[45] De Wit 2008 op. cit. (no pagination)

countries.[46] Thus, some proportion of migratory movement is temporary, with many maintaining financial and cultural links with their home country.[47]

There are several other lenses through which student mobility can be viewed. The concept of "voluntary mobility,"[48] also identified as "spontaneous"[49] or "international free movers,"[50] is based on the idea that there are various "personal, educational and professional" motivations behind international study.[51] It is spurred by the students themselves and they are "individually responsible for the arrangement of their mobility."[52] It stands in contrast to "organized" student mobility, which functions through established programs or institutional initiatives.[53]

Another way to look at ISM can be characterized as "vertical" or "horizontal." Vertical mobility is between two countries with "differences in the development of higher education systems" and "refers to mobility from developing to developed countries where the quality of higher education is perceived as superior or more prestigious."[54] Horizontal mobility occurs between countries with higher education systems on par with each other, such as mobility between developed countries or "intra-European mobility."[55]

There is, further, the basic component to the idea of mobility, the concept of relocating, can be divided into *intra-* or *international mobility*. Intra-national mobility occurs within a country and international mobility traverses national borders (often referred to as transnational).[56] Finally, international mobility of students can be virtual or physical. Rather than physically migrating, many foreign students have chosen to participate in courses online, the availability of which is also the result of the diffusion of mass technology through globalization. Since there have not been any comprehensive studies analyzing this form of international student mobility, however, the implications here are still unclear.[57] "All these types of mobility's are educational processes, of course, but they often entail different experiences, like virtual and physical academic mobility's, and result in different outcomes."[58]

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[46] Hazen, H. D., & Alberts, H. C. (2006). Visitors or immigrants? International students in the United States. *Population, Space and Place*, *12*(3). p. 201.
[47] Gribble, C. (2008). Policy options for managing international student migration: the sending country's perspective. *Journal of Higher Education Policy and Management*, *30*(1). p.27.
[48] Weibl 2014 op. cit. p. 30
[49] Gordon, J., & Jallade, J. P. (1996). 'Spontaneous' student mobility in the European Union: A statistical survey. *European journal of education*, *31*(2), 133-151.
[50] Richters & Teichler 2006 op. cit. p. 94
[51] King et al. 2004 op. cit. p. 7
[52] Carlson, S. (2011). How to Explain the Transnational Occupational Mobility of Former International Students? Suggestions for a Change in Research and Theoretical Perspectives, Analysing the Consequences of Academic Mobility and Migration. Newcastle: Cambridge Scholars Publishing. p. 117-118.
[53] Gordon & Jallade 1996 op. cit. p.133
[54] Reinold, J. (2018). Migration and Education: International Student Mobility. Retrieved from http://nvvn.nl/migration-and-education-international-student-mobility/. Accessed January 5, 2019.
[55] Ibid. (no pagination)
[56] Wells 2014 op. cit. p.20
[57] Samers, M., & Collyer, M. (2017). *Migration*. New York: Routledge, Taylor & Francis Group. p. 87
[58] Wells 2014 op. cit. p.20

It is clear that international student mobility takes on a diverse array of varying forms, most notably in its parameters, its influencing factors, and as a result, in its eventual implications. These forms could be viewed as a kaleidoscope, intersecting and overlapping to reveal differences and similarities. Thus, knowledge of these diverse concepts will add depth and texture to the various dimensions of conceptualizing the international student in the subsequent chapters.

1.2 PUSH AND PULL FACTORS

Any study of international students must include motivation, or, the factors that go into a student's decision to study abroad. As with other types of migration, patterns of international student movement can be interpreted in the context of diverse *push and pull* factors that animate students to study abroad. *Push* factors originate in a students' home country, providing impetus to leave and pursue international study, while *pull* factors function within a host country to attract interested international students.[59] The concept of push and pull factors has been well studied across all categories of migrants and is useful as an organizing principle of analyzing motivation. In fact, student migrants often face a unique combination of determinants and motivations affecting their decisions. The elements are multifaceted and complex, influenced by "economic, cultural, political, and social factors" as well as the "students' personal characteristics," which include "socio-economic background and previous mobility."[60]

Research literature suggests that a lack of access to higher education in less developed nations is one of the contributing factors to the continued growth in international study.[61] Indeed, a major factor often cited to explain the increase in international migration in recent decades is the persistence of economic inequalities between nations. Most academic analysts estimate that not only educational migration, but also of international labor migration will continue to rise as a result of demographic and economic inequalities in this period of globalization.[62]

When international student migration from the US is considered, it could be argued that the cost of higher education acts as an important push factor. Among the pull factors, the desire for foreign language acquisition might motivate students to study abroad.[63] Then there is the idea that the *experience* of cultural exchange unto itself remains an important factor for international student migrants from the US and major industrial economies. (This motivating factor would be a unique luxury afforded to international students originating from developed nations and suggest a deviation from the commonly accepted

[59] Mazzarol, T., & Soutar, G. N. (2002). "Push-pull" factors influencing international student destination choice. *International Journal of Educational Management*, *16*(2), 82-90.
[60] Reinold 2018 op. cit. (no pagination)
[61] Mazzarol & Soutar 2002 op. cit. p.82
[62] Martin, P.L. (2011). The 2008-09 Recession: Implications for International Labor Migration. M. Haddad/B. Shephard (eds.), Managing Openness: Trade and Outward-Oriented Growth After the Crises, Washington, D.C., The World Bank, 2011.
[63] Within Erasmus program mobility, for example, "students may go abroad, not only to complement their studies in the host university, for academic reasons, but also to improve their knowledge of foreign languages, especially the most common languages," such as English, since they "are not required to prove a certain level of language competence by the host university" and can thus use the opportunity to practice their language skills. [Rodríguez González, C., Bustillo Mesanza, R., & Mariel, P. (2011). The determinants of international student mobility flows: an empirical study on the Erasmus programme. *Higher Education*, 62(4), 413-430.]

array of push and pull factors. It implies a level of wealth in which study abroad is an indulgence, and not the only mode to access higher education with its subsequent potential employment opportunities.)

A 1992 study examined trends in international student movement from developing countries to developed countries during the 1960s and 1970s, comparing differing factors motivating mobility. Among other determinants, the push model pointed to the fact that student flow was dependent on level of economic wealth, as well as the value placed on, and availability of, educational opportunities in the home country. Alternatively, economic links and political investments (such as foreign assistance or cultural links) between home and host country, along with availability and range of support for international students, both financial and personal, all effect pull model outcomes.[64]

Push and pull factors often come into play at different stages of the process. Push factors are active when a student is first deciding to study internationally or not. Once a student decides to study overseas, pull factors come into play in determining *where* to study. An institution's reputation, course catalogue, and resources are all important considerations.[65] Kemp, Mazzarol, & Savery[66] outline additional key pull factors that influence student migrants. Knowledge about the destination country in the student's country of origin, as well as the reputation of the country and its educational system (public opinion) is a factor. The opinion of key people in a student's inner circle also plays a role in decision-making. The various dimensions of cost (fees, living expenses, travel costs), study environment, geographic proximity and social connections are other principal pull factors a student weighs when deciding on a host country destination.

While push and pull factors should be included in this analysis, the traditional framework is complicated by "reverse" factors that are considerations for internationally mobile students. "Home countries may also have strong pull factors to hold some students back; such as linguistic and cultural security, social and family ties, [and] lower cost of living."[67] It has been argued that ISM data, based in statistics and numbers, often muddles the fact that it is indeed "human agency" that spurs student flows—push and pull factors only guide and characterize them.[68] As with all forms of migration, reactions to these factors are dependent on a highly complex and personalized set of traits and circumstances.

1.3 THE "BRAIN DRAIN"

With an accelerating demand for higher education, universities in developing countries have been increasingly unable to offer sufficient places for interested students, pushing more and more talented young people towards studying abroad. This option has also become more accessible due to declining costs in transportation and methods of

[64] McMahon, M.E. (1992). Higher education in a world market: an historical look at the global context of international study. Higher Education. Vol. 24 No. 4. pp. 465-82.
[65] Mazzarol, T.W. (1998). Critical success factors for international education marketing. *International Journal of Education Management*. Vol. 12 No. 4. pp. 163-75.
[66] Kemp, S., Mazzarol, T., & Savery, L. (1997). *International Students Who Choose Not to Study in Australia: An Examination of Taiwan and Indonesia*. Australian International Education Foundation. Canberra. p.36-40
[67] Wells 2014 op. cit. p.21
[68] De Haas, H., Bakewell, O., Castles, S., Jónsson, G. & Vezzol, S. (2009). Mobility and Human Development. *Paper 14 of Working Papers of International Migration Institute, University of Oxford*. p. 1-5.

communication, and is increasingly more appealing due to the assumed advantages of a degree obtained abroad.[69] Home countries of international students benefit from the development of personal networks, as well as financial remittances, technological transfer, and entrepreneurship; diplomatic ties are also strengthened.[70] Common to all those who study abroad is the "acquisition of skills and knowledge"[71] that are valuable and can contribute to their home country economy. Often times, international students also develop important connections with overseas institutions, leading to opportunities for further research and future educational exchange. Additionally, commerce and industry in the host country may also "generate business and commercial opportunities" that benefit the home country.[72] Academics and students play an integral role to the broadening and strengthening of research endeavors, which later translates to product development and commercial dissemination.[73] Student migration flows between two *developed* nations often offers a different dynamic and accompanying rationale, however.

The emigration of highly trained individuals from a country is a *brain drain*, and scholars have identified points of intersection between student migration and the concept of brain drain.[74] While much of the discussion around student brain drains are associated with those leaving developing countries and travelling to developed countries, this is not exclusively the case. "The flow of students to other parts of Europe or the United States is of major concern to many European countries."[75] A 2003 European Commission report identified that three-quarters of doctoral students coming from Europe, predominately students coming from Britain and Germany, stayed in the US after graduating. European students noted better research institutions, higher salaries, an increased standard of living, as well as a "culture of entrepreneurship" as some of the attracting features.[76]

Conditions in a home country can also contribute to an outflow of students. Some countries in the Southern Europe region, including Spain and Italy,[77] have lost a number of talented individuals, especially in the sciences, due to limited public funding, slow career progression, low salaries, and a lack of opportunities in the private sector.[78] Switzerland, however, has been much more successful at keeping its students—and attracting international students—as a result of their exceptional higher education system: an environment that appreciates collaboration between academia and industry, promotes

[69] Gribble 2008 op. cit. p. 26-28
[70] Hugo, G. (2003). Circular migration: Keeping development rolling? *Migration Information Source*. Retrieved May 8, 2018, from https://www.migrationpolicy.org/article/circular-migration-keeping-development-rolling.
[71] Weibl 2014 op. cit. p.49
[72] Gribble 2008 op. cit. p.31
[73] Nunn, A. (2005). *The 'brain drain': Academic and skilled migration to the UK and its impact on Africa – Report to AUT and NATFHE.* Leeds: Policy Research Institute, Leeds University. p.8.
[74] See de Wit (2010); Oosterbeek & Webbink (2011); Le (2008); Baruch et al. (2007); among others.
[75] Gribble 2008 op. cit. p.32
[76] European Commission. (2003). Communication from the Commission: The role of the universities in the Europe of knowledge. Retrieved from https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2003:0058:FIN:en:pdf. Accessed January 2, 2019.
[77] Hellemans, A. (2001). Beating the European brain drain. *Nature*, *414*(6862), 4-5.
[78] Pelizon, C. (2002). Is the Italian brain drain becoming a flood? Science Magazine. Retrieved from http://www.sciencemag.org/careers/2002/05/italian-brain-drain-becoming-flood. Accessed May 8, 2018.

superior research support, and establishes the importance of maintaining a global presence.[79]

It is important to note that this phenomenon of brain drain often confuses mobile students with highly skilled permanent migrants. The difference is crucial as the latter are usually educated in their country of origin but tend to stay in the host country; "the aim of their relocation is work, not education."[80] Thus while highly skilled migrants may be part of a brain drain, mobile students do not necessarily behave in the same patterns.

Rising international student numbers headed for certain host country destinations may also be attributed to historical ties. The UK is often cited as the most popular destination for US students due to language and cultural similarities. Among the various factors that go into choosing a study abroad destination, "historical or colonial links between host and home countries" have often played a role, as well as "commonality of language."[81] Such ties allow students to benefit from a familiarity with the language and culture of the host country, oftentimes making their adjustment easier.[82] Additionally, the UK has consistently been the second most popular destination for international students globally, behind the United States.[83] (UNESCO statistics indicate that the United States, the UK and Australia attract the most overseas students to their universities. While English is not the most spoken language globally, it is by far the world's most commonly studied language, with 1.5 billion learners.[84] Within the EU there is a concentration of foreign students in the UK, often attributed to the desire of students to learn English.[85])

1.4 International Study Differences in the Transatlantic Sector

Although international study programs across the globe often share similar broad objectives, educational differences emerge between countries of diverse historical, political, cultural realities, such as the United States and the collective of countries within Europe. Camiciottoli[86] argues that European study abroad focuses on broadening the *academic* experience for students, while US attitudes emphasize attaining *cross-cultural* experience. There are also economic differences: European students often have access to funding from their national government or from other European institutions, whereas international study in the US is predominately financed privately. European study exchanges aim to integrate students fully into host university environments, while US study abroad programs are typically characterized by groups of students supervised and taught in English by faculty of the home institution in special courses offered at its

[79] Gribble 2008 op. cit. p.32-33
[80] Wells 2014 op. cit. p.22
[81] Mazzarol & Soutar 2002 op. cit. p. 4
[82] Dumont, J. C. (2006). Immigrants from Arab countries to the OECD: From the past to the future. *Proceedings from the United Nations Expert Group Meeting on Migration and International Development in the Arab Region*. Retrieved May 8 2018, from http://www.un.org/esa/population/migration/turin/Symposium_Turin_files/P11_Dumont(OECD).pdf
[83] Binsardi, A., & Ekwulugo, F. (2003). International marketing of British education: research on the students' perception and the UK market penetration. *Marketing Intelligence & Planning*, *21*(5), 318-327.
[84] Noack, R., & Gamio, L. (2015). The world's languages, in 7 maps and charts. Retrieved from https://www.washingtonpost.com/news/worldviews/wp/2015/04/23/the-worlds-languages-in-7-maps-and-charts/?noredirect=on&utm_term=.1d083dcd8a91. Accessed May 9, 2018.
[85] Samers & Collyer 2017 op. cit. p. 126
[86] Camiciottoli, B. C. (2010). Meeting the challenges of European student mobility: Preparing Italian Erasmus students for business lectures in English. English for Specific Purposes, 29(4), 268-280.

'satellite' set up in the foreign country. "…On the linguistic, cultural and social levels, European students face a more demanding experience than their US counterparts."[87]

In the United States, international students are officially designated as temporary non-immigrants, but many eventually become immigrants after studying there. The findings of a 2006 study done at the University of Minnesota suggest that few students travel to the US with the intention of immigrating permanently. Professional, societal and personal factors later influence students in their decision. Essentially, "economic and professional" factors are motivation to stay in the US, while "personal and societal" determinants might pull them back to their home countries.[88]

However, in Europe, free movers make up more of student mobility than those participating in organized programs,[89] and the majority of international students are exchange students, rather than degree-seeking students. The European Parliament and Council[90] identify International Student Mobility as "a period of learning abroad (formal and non-formal), or mobility undertaken by individual young people or adults, for the purposes of formal and non-formal learning and for their personal and professional development." This definition, though, seems to include all those involved in learning processes and is not specific to students. Students are different from informal learners, however, as they "seek tertiary education that can be documented and subsequently recognized."[91] In the *Communiqué of the Conference of European Ministers Responsible for Higher Education, Leuven and Louvain-la-Neuve*,[92] academic mobility is defined as "a study or training period abroad." The US context differs since "most international student migrations in the EU take place between two EU countries and, therefore, do not face the [same] migration restrictions" as in the US.[93]

In view of the above, although international student mobility is a worldwide phenomenon, trends within the US and the EU offer particular characteristics and motivations that sometimes differ and sometimes overlap. These unique attributes are necessary to keep in mind when situating the figure of the international student in the context of the transatlantic sector. Such peculiarities will be further highlighted and elaborated on throughout the different sections of this analysis. Many of the above concepts will take on further significance as they are examined in more depth in upcoming chapters. Of

[87] Ibid. p. 269
[88] Hazen & Alberts 2006 op. cit. p. 201
[89] Reichert, S., & Wächter, B. (2000). *The globalisation of education and training: Recommendations for a coherent response of the European Union*. Academic Cooperation Association.
[90] European Parliament and Council (2006). Recommendation of the European Parliament and of the Council of 18 December 2006 on transnational mobility within the Community for education and training purposes: European Quality Charter for Mobility. *Official Journal of the European Union*, L 394(5). p. 8.
[91] Wells 2014 op. cit. p.20
[92] European Ministers Responsible for Higher Education (2009). *The Bologna Process 2020 – The European Higher Education Area in the new decade - Communiqué of the Conference of European Ministers Responsible for Higher Education, Leuven and Louvain-la-Neuve, 28-29 April 2009*. Retrieved from http://www.ond.vlaanderen.be/hogeronderwijs/bologna/conference/documents/Leuven_LouvainlaNeuve_Communiqu%C3%A9_April_2009.pdf. p.4
[93] Hazen, H. D. & Alberts, H. C. (2005). "There are always two voices…": International Students' Intentions to Stay in the United States or Return to their Home Countries. *International Migration*, *43*(3), 131-154.

particular note will be analyses of how student migrants are regulated in the US versus how intra-EU and third-country national student migrants are regulated in the EU, taking into account the complex interplay of the free movement of persons and EU citizenship with issues of competence. In addition, while the historical evolution and tensions surrounding the international student as an actor of cultural diplomacy will be shown to arise from different sources in the US and the EU, both have resulted in a common unpredictability: the impossibility of controlling individual actors operating in the realm of international relations, since agendas may not align with that of national governments or supranational bodies. Finally, a diachronic shift will be traced in both the US and the EU, albeit with distinct timelines and iterations, that points to an increased focus on economic rationales for ISM on the part of institutions, with the international student as a key component for economic gain.

1.5 CONCLUSION

This introductory chapter identified underlying issues and key considerations in the field of ISM in an effort to offer a foundational basis for what is to come. The associated lexicon was dissected and the meaning of the term "international student" interrogated, congruent with current research literature. For the forthcoming exploration of distinct conceptualizations of the international student to prove significant within our understanding of international student mobility, various aspects of this phenomenon have been introduced.

First, the most prominent issues that plague the field of ISM were addressed. Various aspects of research in this area that generate conflicts or inconsistencies were enumerated, including the most basic: what the term international student means. Both parts of the term have been seen as problematic, with different examples of definitions cited along with the limitations of each. Moreover, issues arise from the fact that data cannot be reliably interpreted if there is no consistency with the terms being used and the concepts being discussed. Included as an example is the OECD, which acknowledges that the definitions used may result in different countries interpreting them differently.

Thus, the chapter offers a functional definition of an international student that allows the dissertation to organize the various issues and dimensions of ISM in such a way as to clearly explicate the concepts being presented. Additionally, on the important issue of data collection: several researchers have brought up the challenges associated with statistics being developed in differing capacities, and of countries not using standardized means of collection, or standardized definitions. For these reasons researchers have encountered difficulties with data on ISM. That said, efforts to encourage standardization have been attempted, with one IIE initiative, the Atlas Project, working to standardize and strengthen data collection and thereby increase its comparability. Despite these efforts, and those of Eurostat, complexities remain.

In order to productively compare ISM data, an understanding of the varied types of mobility is also crucial. These types are often conceived of in contrasting pairs. Included are diploma vs. credit mobility (also designated as long-term vs. short-term); voluntary vs. organized, (contrasting students operating individually from those students taking part in

organized programs); vertical vs. horizontal mobility (the former used in cases of mobility between countries at different levels of development, and the latter between countries at the same or very similar levels); intra-national vs. international student mobility; and finally virtual vs. physical mobility. Experiences and outcomes have been shown to be affected by which type of mobility is involved, and it is thus essential to keep this wide degree of variation between international students in mind when conceptualizing the same.

Motivational factors also play a critical role in ISM. These can be broadly categorized into push and pull headings. Push factors generally enter in the home country at the point of deciding to study abroad or not, and pull factors arise when deciding where to study. Research shows that a myriad of considerations, including financial, academic, cultural, social, etc., come into play when making decisions about ISM. Although it may be very difficult to untangle an individual student's motivations, which are often obscured in a fog of personal traits, preferences, and circumstances, motivations must be studied and analyzed because they have a significant impact on students' perceptions of their experiences.

The phenomenon of brain drain is also discussed, as it constitutes a particular kind of mobility. While the concept has often entailed a type of vertical mobility, there have also been examples of brain drain as horizontal mobility, particularly in the transatlantic sector. Pull factors such as better research possibilities, higher wages, and better standard of living were cited as reasons why, but in other cases, push factors such as conditions in their home countries might also contribute. A final factor that is important when discussing decisions to study abroad is that of historic, linguistic, and cultural ties between the home country and the study destination. Research reveals that the US, the UK, and Australia, all countries that share the ties mentioned above, are perennially the most popular destinations for students desiring to study abroad.

This first chapter concludes with a preliminary discussion of the differences in international study between the US and the EU, foreshadowing the general outline of this dissertation. These differences include educational, economic, academic, and legal disparities, all of which will be examined and analyzed more completely in the forthcoming chapters. Ultimately, the concepts and considerations discussed here will be integrated into the subsequent analyses, reflected upon and examined with greater purpose when conceptualizing the international student in international migration law, diplomacy, and higher education economy.

2 THE STUDENT MIGRANT IN INTERNATIONAL LAW

2.1 INTRODUCTION

While the concept of international students as migrants has been discussed in research literature in different disciplines including geography, sociology and education,[94] it has not yet been fully developed through the lens of international laws and norms. It is critical that scholars also examine the legal component to the international student experience through the structures and procedures in place. Due to this lacuna, the aim of this chapter is to offer a comprehensive look at student migrants within the basic structures that underlie International Migration Law, as well as current issues and crucial conversations in the context of US and EU policy.

Students represent a complex continuum between temporary and permanent migration.[95] They encompass diverse roles and traverse various immigration classifications. That diversity presents us with the first problem: there is no unified definition of what constitutes a student migrant. Accordingly, the first section will define and interrogate the term international migrant, address how the international student fits into that demarcation, and finally, identify what is distinctive about student migrants. This will be done through an analysis of how prominent international organizations define the term migrant in the general sense, addressing associated inadequacies, and what they mean in regard to accurate reporting and data collection. Related key terms and discussions surrounding student migration will also be examined in an effort to highlight the varied treatments of student migrants across national policies. In this context, advances spurring from the 2018 Global Compact for Safe, Orderly and Regular Migration, including how it seeks to address shortcomings in matters of migration, and how it applies to student migrants, will be looked at.

A second issue is the inherent overlap between international study and migration law. The next section treats the foundations, rationality and sources of International Migration Law (that include customary law, treaty law and soft law), as well as the key principles of the discipline, with the objective of parsing out in what way each of these components addresses the student migrant. Considerations regarding education and migration within key multilateral treaties, and relevant international conventions, will be examined in an effort to reflect on whether the right to education includes the right to higher education, and the right to access it. Subsequently, the valuable contributions of soft law that address particular aspects of international migration, and the relevance of international educational agreements in this arena, will be assessed.

The third section assays the principles central to IML that include the right to leave, the right to admission and the rights afforded to migrants in host countries, as they relate to students. Additionally, since access to education is inherently linked to the discussion of international student mobility, the scope of the right to higher education will be further developed. The right to leave, as it relates to the brain drain issue, the interaction between national law and international norms within the right to admission, and how the rights

[94] See King & Findlay (2015); King & Raghuram (2013); Hazen & Alberts (2006); among others.
[95] Samers & Collyer 2017 op. cit. p.273

afforded to student migrants in host States and are not codified as universal will be discussed. The aim is to highlight different discussions surrounding the student migrant in regard to the principles that ground IML, and critically interrogate these peculiarities.

The latter half of the chapter will then segue into national and regional legislation in the transatlantic sector. First, US immigration regulations for international students will be laid out, addressing the convolutions of becoming a permanent resident as it relates to student migrants, and reflecting on the complexities of treating student migrants exclusively as students. Subsequently, the effects of the Student and Exchange Visitor Information System (SEVIS) on student migrants in the US, as well as the current situation for international students under Trump will be outlined. Later, regional legislation in the context of the EU will be addressed.

EU regulations for student migrants will first be delineated in broad strokes, looking at the foundational free movement of persons and EU citizenship, as well as related issues of competence, dovetailed with an overview of EU immigration policy developments. Next, how intra-EU and third-country national student migrants are regulated will be examined, scrutinizing: issues surrounding equal treatment and the right to benefits; questions regarding permanent residence (the Blue Card); and how the principle of non-discrimination is addressed. Important reflections on the implications of the limiting nature of the student migrant identity will be discussed throughout. Finally, current immigration policy considerations, including a recent focus on irregular migration to the EU, and the significance of the departure of the UK from the EU (Brexit) will be dealt with. Broadly speaking, the latter half of the chapter seeks to comparatively analyze the legal treatment of student migrants in the transatlantic sector, identifying deficiencies and implications.

2.2 THE STUDENT AS MIGRANT

The concept of international students as migrants has not yet been developed in a fully integrated manner. This section will first critically analyze how prominent international organizations define the term migrant in the general sense, and address associated inadequacies. Then, how student migrants have been referred to in social science literature will be considered in order to contextualize the current discourse. Finally, the relevance of the 2018 Global Compact for Safe, Orderly and Regular Migration, the only comprehensive framework of common principles and approaches for international migration to date, will be dissected as it applies to student migrants.

2.2.1. Definitional Criteria Used by Leading International Organizations

In trying to define who is a student migrant, how migrants are defined on the international plane must first be investigated. International organizations are the established source for globally accepted definitions. However, there are discrepancies when defining migrants that fall along a broad spectrum. When states seek to find a baseline universal definition, for example, there is no unambiguous point of reference. As a result, this first line of inquiry will map out what the UN, the OECD, and the IOM offer as definitions. The UN predominately lays the groundwork for duration criteria, which is in line with the OECD, however, the OECD extends the concept to include purpose of

movement. Finally, the IOM's definition is more inclusive in certain ways, however still problematic in others, principally regarding divergent classification considerations.

Research literature highlights the United Nations definition of migrant as an essential starting point. A detailed exploration of the term is put forth in a paper commissioned for the Global Education Monitoring Report 2019 Consultation on Migration. The UN establishes an international migrant as "any person who changes his or her country of usual residence for a minimum period of time."[96] This is categorized as either:

> A *short-term migrant*, defined as "a person who moves to a country other than that of his or her usual residence for a period of at least three months but less than a year (12 months) except in cases where the movement to that country is for purposes of recreation, holiday, visits to friends or relatives, business, medical treatment or religious pilgrimage. For purposes of international migration statistics, the country of usual residence of short-term migrants is considered to be the country of destination during the period they spend in it."
>
> Or alternatively,
>
> A *long-term migrant*, meaning, "a person who moves to a country other than that of his or her usual residence for a period of at least a year (12 months), so that the country of destination effectively becomes his or her new country of usual residence. From the perspective of the country of departure, the person will be a long-term emigrant and from that of the country of arrival, the person will be a long-term immigrant."[97]

The UN defines "usual residence" as "the geographical place where the person usually resides," however "not all…states adhere to this definition or they interpret it differently" as "many countries still count their nationals as part of the resident population at least for a few months after they have left."[98] Another point of contention relates to "whether all people who change their usual residence should be counted."[99] Within the UN recommendations, all moves are permitted to be included as a form of migration "as long as it satisfies the duration criteria, regardless of purpose."[100] How the receiving state determines or defines long-term movement, however, or if the move was *meant* to be temporary or permanent do not figure in. "The nature of the duration measure" is not addressed, meaning "whether it is the expected duration of stay, the duration of the permit granted upon entry or the actual duration of stay in the host country" that is being considered.[101] Thus, as can be seen, variations arise in areas of duration criteria, including

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[96] Tani, M. (2017). Migration and Education. *Paper commissioned for the Global Education Monitoring Report 2019 Consultation on Migration (Rep.).* https://es.unesco.org/gem-report/sites/gem-report/files/Think piece - International migration and education - Tani - FINAL.pdf. p.vii.

[97] UN recommendations on the statistics of international migration. (1998). Retrieved from https://unstats.un.org/unsd/publication/SeriesM/SeriesM_58rev1E.pdf p. 10. Accessed December 12, 2018.

[98] Fassmann, H. (2009). European migration: Historical overview and statistical problems. *Statistics and reality. Concepts and measurements of migration in Europe*, 21-44.

[99] Ibid. p.33

[100] Tani 2017 op. cit. p.vii

[101] Lemaître, G. (2005). The comparability of international migration statistics – problems and prospects, OECD Statistics Briefs, July 2005, No. 9. Organisation for Economic Co-operation and Development, Paris. p.2.

how the receiving state identifies the movement, the intended length, as well as how the duration is calibrated.

In line with United Nations recommendations, the OECD Glossary of Statistical Terms categorizes migrants into four groups: "long-term immigrants (or emigrants); short-term immigrants (or emigrants); residents returning after (or leaving for) a period working abroad, i.e. short-term emigrants returning (or leaving); and nomads."[102] However beginning in 2005, the OECD has begun to "organise information according to the purpose of movement, as also perceived by the country of destination," so as to expand upon the practical use of the UN's definition.[103] Accordingly, the reason for the movement plays a significant role in classifying migrants.

The International Organization for Migration (IOM) offers an alternate definition in which migration is identified as "the movement of a person or a group of persons, either across an international border or within a State. It is a population movement, encompassing any kind of movement of people, whatever its length, composition, and causes; it includes migration of refugees, displaced persons, economic migrants, and persons moving for other purposes, including family reunification."[104] Albeit more inclusive in nature, similar drawbacks arise in that clear distinctions (including motivations, intent or duration) aren't made between different migratory groups and thus it doesn't offer any concrete means for effective monitoring of migration flows. Additionally, the IOM uses "the criterion of country of nationality," or citizenship, while the UN uses "country of birth," which, when used "interchangeably generates…ambiguities."[105] In this case, from a comparative perspective, data reporting can prove capricious. Thus, although the IOM's definition is more inclusive in certain ways, it also creates conflicting criteria.

To conclude, while these prominent definitions endeavor to be broad and versatile, it is these same attributes that create limitations when looking to establish parameters for data measurement, and consequently, hold policy implications. Whether countries adhere to the definitions put forth by prominent international organizations, choosing to organize statistical information according to period of time, purpose of movement, or other related criteria, a lack of consistency proves the greatest obstacle—especially regarding accurate reporting, and in turn, data collection. This is problematic in the long-term if relied upon for policy decision-making and implementation.

2.2.2. Student Migration in Interdisciplinary Research

With the aforementioned definitions as a foundation, the next objective is to present additional key terms and discussions surrounding student migration. The concepts of

[102] OECD Glossary of Statistical Terms. (2007). Retrieved from http://www.digila.it/public/iisbenini/transfert/Marsico/progetto diritto al lavoro/glossary.pdf. Accessed July 1, 2018.
[103] Tani 2017 op. cit. p.viii
[104] Perruchoud, R. & Redpath-Cross, J. (eds.) (2011). IOM Glossary on Migration, International Migration Law Series No. 25, 2011. Retrieved from https://publications.iom.int/system/files/pdf/iml25_1.pdf. p.62-63.
[105] Fargues, P. (2017). International Migration and Education - A Web of Mutual Causation. *Paper commissioned for the Global Education Monitoring Report 2019 Consultation on Migration*. https://es.unesco.org/gem-report/sites/gem-report/files/Fargues_International%20Migration%20and%20Education.pdf. p.3.

mobility vs. migration, directionality (i.e. circuitous movement), as well as the interrelationship between education and migration dynamics are all important considerations. In this line, narrowly defining student migrants as such is not sufficient to address the breadth of their various roles.

Turning our attention to migration in the context of international study, the terms *student migration* and *student mobility* have blended together and been used synonymously. Research literature establishes that mobility is now mainly used to discuss "a shorter time frame with a high probability of return," while migration implies "relocation for a longer period (at least one year)."[106] [107] The term migration is not always apt for international students pursuing postgraduate studies, though. Take the case of PhD studies: such degrees often take more than one year to complete, yet many postgraduate students return home after their course of study finishes.[108]

Further considerations include the idea of "circulation." The concept of "international student circulation"[109] points to directionality of the mobility, more so than length of time. It was introduced in an effort to include "both the inward and outward flow of students."[110] Then sometimes mobility turns into migration.[111] While new modes of migration emerge as a result of unpredicted factors and events that may arise, the idea of mobility plays a continuous and multifaceted role.[112]

Yet another consideration is the relegation of students to a different immigration category or status: the so-called "immigration-education nexus."[113] This can be interpreted as both immigration's effect on schooling, and as the interrelationship between international students and migration dynamics—inherently overlapping but consistently being subject to divisions. Identifying migrants as students, and exclusively students, for example, separates them from their other diverse roles. Student migrants are also "family members, actual or potential workers, or even refugee and asylum-seekers."[114] It is thus useful to incorporate students into the ongoing discussion of migration policy and trends. Additionally, many students possess a "transnational consciousness," maintaining strong connections and communication to their home countries.[115] All these factors contribute to the uniqueness of the student migrant.

As discussed, student migrants are "a specific form of transnational migrant with migration trajectories that are circuitous rather than linear." In the transatlantic sector, for

[106] Weibl 2014 op. cit. p. 28
[107] King et al. 2010 op. cit. p.6
[108] Weibl 2014 op. cit. p. 28
[109] De Wit, H., Agarwal, P., Said, M. E., Sehoole, M. T., & Sirozi, M. (2008). *The dynamics of international student circulation in a global context*. Rotterdam: Sense Publishers. p.15-45.
[110] Ibid. p. 28
[111] Baláz, V., Williams, A. M., & Kollar, D. (2004). Temporary versus permanent youth brain drain: economic implications. *International Migration*, *42*(4), 3-34. p.6.
[112] Murphy-Lejeune, E. (2003). *Student mobility and narrative in Europe: The new strangers*. Routledge. p.2.
[113] Rodan, P. (2009). The international student as student, migrant and victim: Changing perceptions in a vexed area of public policy. *Australian Universities' Review*, *51*(2), 27-31.
[114] King & Raghuram 2013 op. cit. p.1
[115] Robertson, S. (2013). *Transnational Student-Migrants and the State - The Education-Migration Nexus*. Palgrave Macmillan. p. 5.

example, there is a distinction between "two-step" and "stepping stone" countries, in terms of immigration policy.[116] Canada, for example, would represent a two-step process in that it offers a clear path from study to residence. Alternatively, the US, the UK, France and Germany would be stepping stone countries in which the path from student to permanent residency tends to be a much more complex and convoluted process. This once again demonstrates the varied treatments of student migrants across national policies.

In closing, while it is clear that migrant categories are treated differently in different national contexts, the international student is singular in that it is a status that can overlap with and span varying migrant classifications. Within this discourse is the dichotomous relationship between mobility and migration, the directionality of movement, and an education-migration link that remain ever-present considerations. As will be discussed in subsequent sections, students can be multiform: long-term or short-term migrants, visa holders or permanent residents, workers, refugees, etc. Thus, defining student migrants in such a limited fashion is inadequate to speak to the multiplicity of their roles.

2.2.3. The Global Compact: its Relevance for Student Migrants

Since student migrants possess characteristics that coincide with and span varying migrant classifications, a more comprehensive framework in the field of international migration in general would better standardize procedures and policies. The establishment of a set of shared principles and approaches that includes and addresses those who migrate specifically for the purposes of education brings with it the possibility for more uniformity. The UN Global Compact represents the most advanced attempt yet to address all categories of migrants in a comprehensive manner, including student migrants.[117]

This process was initiated through the 2016 New York Declaration for Refugees and Migrants[118], which outlined concrete plans for how to build on proclaimed commitments, which included the opening of "…negotiations leading to an international conference and the adoption of a global compact for safe, orderly and regular migration in 2018." This move towards a "comprehensive framework" was meaningful as it signified that the field of migration would be "guided by a set of common principles and approaches."[119] [120]

Subsequently, in December of 2018, the Global Compact for Safe, Orderly and Regular Migration became the "first intergovernmental negotiated agreement, prepared under the auspices of the United Nations, to cover all dimensions of international

[116] Ibid. p.12-42.
[117] The Compact was "officially endorsed" by the United Nations General Assembly, with 152 nations voting in favor. [UN News. (2018). General Assembly officially adopts roadmap for migrants to improve safety, ease suffering | UN News. Retrieved from https://news.un.org/en/story/2018/12/1028941. Accessed July 1, 2019.]
[118] Resolution 71/1 was unanimously adopted by all UN Member States.
[119] New York Declaration Fact Sheet. (2018). Retrieved from https://refugeesmigrants.un.org/declaration. Accessed November 1, 2018.
[120] Importantly, in Section IV, when referring specifically to Commitments for refugees, education is considered in relation to the "the expansion of existing humanitarian admission programmes" that would include scholarships and student visas. (Article 79)

migration in a holistic and comprehensive manner."[121] There are myriad ways in which the Global Compact has relevance for student migrants, which will be examined forthwith.

The July 2018 final draft agreement lists 23 Objectives for Safe, Orderly and Regular Migration. The following objectives have direct implications for student migration:

> (1) Collect and utilize accurate and disaggregated data as a basis for evidence-based policies;
> (2) Minimize the adverse drivers and structural factors that compel people to leave their country of origin;
> (5) Enhance availability and flexibility of pathways for regular migration;
> (18) Invest in skills development and facilitate mutual recognition of skills, qualifications and competences.

These particular objectives are exemplars of what has been discussed as the three different categories of aims addressed in the Compact: "specific and relatively uncontroversial measures" (objective 1); "specific but controversial issues" (objective 5); or, "broad and aspirational goals" (objective 2).[122]

As previously noted, one of the issues facing student migration is the dearth of solid, consistent national data on mobility, which complicates data compilation and reporting.[123] Objective 1 seeks to address difficulties in data collection by "harmonizing methodologies" and "improve[ing] international comparability and compatibility of migration statistics and national data systems," which involves "further developing and applying the statistical definition of an international migrant." This would include a wider breadth of migration information recorded in national censuses, including country of birth as well as country of residence five years prior to the census, and reason for migrating. Importantly, the agreement "calls for migration policies based on data and evidence"[124] and Objective 1 is a clear attempt to map a comprehensive solution to many of the problems previously discussed regarding lack of uniformity in reporting. If issues with inaccurate statistical information were addressed, more effective migration policy could be enacted. Even though "evidence based policy making" is a step in the right direction, more extensive data collection and "disaggregated data sharing among states" could potentially cause "interference with the right to privacy of migrants"[125] which is an important point concerning this action. However, the fulfillment of Objective 1 would allow for a much-improved system of data collection for migrants in general, and student migrants in particular.

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[121] IOM. (2019). Office of the Director General - Global Compact for Migration. Retrieved from https://www.iom.int/global-compact-migration. Accessed December 12, 2019.
[122] Newland, K. (2018). The Global Compact for Safe, Orderly and Regular Migration: An Unlikely Achievement. *International Journal of Refugee Law*, *30*(4), 657-660. p.658.
[123] De Wit 2008 op. cit. (no pagination)
[124] McAdam, J. (2019). The global compacts on refugees and migration: A new era for international protection? *International Journal of Refugee Law*, vol. 30, pp. 571-574.
[125] Guild, E., & Basaran, T. (2018). First Perspectives on the Zero Draft (5 February 2018) for the UN Global Compact on Safe, Orderly and Regular Migration (February 14, 2018). *Queen Mary School of Law Legal Studies Research Paper*, (272).

Objectives 2, 5 and 18 go on to undertake actions related to international migration for purposes of study. First, Objective 2 seeks to "invest in human capital development by promoting entrepreneurship, education, vocational training and skills development programmes and partnerships, productive employment creation, in line with labour market needs, as well as in cooperation with the private sector and trade unions, with a view to reducing youth unemployment, avoiding brain drain and optimizing brain gain in countries of origin, and harnessing the demographic dividend." While the occurrence of brain drain often confuses mobile students with highly skilled permanent migrants,[126] conditions in a home country can contribute to an outflow of students, which this objective endeavors to remedy. An active investment in human capital development in the home country, specifically in the realm of education, might act as a catalyst in quelling migration flows for the purpose of study.

As for Objective 5, it specifically addresses student migrants in the context of broadening pathways for regular migration, with certain provisos. It commits to:

> "Expand available options for academic mobility, including through bilateral and multilateral agreements that facilitate academic exchanges, such as scholarships for students and academic professionals, visiting professorships, joint training programmes, and international research opportunities, in cooperation with academic institutions and other relevant stakeholders."

This is especially significant in that it directly addresses a commitment to the expansion of available options for student migrants in the context of bilateral and multilateral agreements for the purposes of education. However, the action does not specifically outline means for student migrants to have direct avenues for eventual immigration in the academic host country.[127] It addresses "flexible, convertible and non-discriminatory visa and permit options, such as for permanent and temporary work, multiple-entry study, business, visit, investment and entrepreneurship" but again, does not call for the implementation of concrete channels.

Finally, Objective 18 discusses facilitating "mutual recognition of skills, qualifications and competences of migrant workers at all skills levels" as well as promoting "demand driven skills development to optimize the employability of migrants." It also touches on international cooperation related to educational opportunities via the promotion of "inter-institutional networks and collaborative programmes for partnerships between the private sector and educational institutions in countries of origin and destination to enable mutually beneficial skills development opportunities for migrants, communities and participating partners." This action is crucial, specifically for student migrants, in terms of mutual recognition of qualifications, which serves to alleviate particular mobility concerns, as well as to facilitate a smoother transition into the labor market.

[126] See Chapter 1, Section 1.3
[127] See Chapter 2, Section 2.5.1.1

By way of conclusion, a move towards the establishment of a set of shared principles and procedures that includes and addresses those who migrate specifically for the purposes of education, as the Global Compact does, brings with it sanguine expectations for more uniformity.[128]

Ultimately, if countries do not adhere to the definitions put forth by prominent international organizations, choosing to organize statistical information as they see fit according to period of time, purpose of movement, or other related criteria, a lack of consistency will remain the greatest obstacle—especially in regard to accurate reporting, and in turn, data collection. This issue affects international migration flows as a whole, and student migrants in particular.

2.3 International Legal Instruments Governing Student Migration

In an effort to contextualize the comprehensive framework advanced by the Global Compact, this section will examine the field of International Migration Law: its foundations, rationality and sources. The inherent importance of IML is that it aims to facilitate a more integrated approach to the analysis of migration issues. Correspondingly, considerations regarding education and migration within key multilateral treaties will be explored in an effort to interrogate the idea of whether the right to education includes the right to access it. The role of soft law instruments, and specifically, international educational agreements, will also be analyzed.

2.3.1 Foundations of International Migration Law

The origins of international migration law developed in a slow and piecemeal fashion during the interwar period and were further solidified after the Second World War through the emergence of important human rights instruments such as The Universal Declaration of Human Rights (1948).[129] International migration law instruments were developed mainly through the impetus of the UN and the ILO.[130] There was, as a result, a significant body of international legal norms that govern migration in contemporary international law. Additionally, "institutions were developed with diverse functions, ranging from operational support for migrants, to monitoring compliance with, and encouraging enforcement of, the new legal instruments."[131] The emergence of these instruments and institutions laid the groundwork for what is international migration law, an assemblage of international norms that governs the movement of persons internationally.

[128] Although the Compact offers "a new undertaking by States to uphold the human rights of migrants" it still "needs to be strengthened by an enhanced commitment to eliminating discrimination between citizens and migrants, and between different categories of migrants." [Guild, E. (2019). The UN Global Compact for Safe, Orderly and Regular Migration: What Place for Human Rights? *International Journal of Refugee Law*, *30*(4), 661-663.] Additionally, the level of international commitment to and practical implementation of the ambitious objectives outlined remains to be seen; follow-up and review will be carried out by The International Migration Review Forum meeting every four years beginning in 2022. "The most remarkable thing" regarding the agreement it seems, "is that it exists at all." Newland 2018 op. cit. p.657

[129] Opeskin, B., Perruchoud, R., & Redpath-Cross, J. (2012). *Foundations of International Migration Law*. Cambridge University Press. p.2.

[130] Perruchoud, R., & Tömölová, K. (eds.). (2007). *Compendium of international migration law instruments*. International Organization for Migration. ISBN: 978-90-6704-249-9.

[131] Opeskin et al. 2012 op. cit. p. 5

2.3.1.1 Definitions and Rationality

Since first conceptualized and consolidated in published volume in *International Migration Law* by Richard Plender[132] in 1972, the concept and study of international migration law (IML) has been further developed and has become increasingly relevant to the current social and political climate. In line with the IOM, IML refers to the international legal structure or frame of reference that governs migration, and does not derive from one particular legal instrument. It is a broad term that encompasses the various principles and rules that collectively "regulate the international obligations of States with regard to migrants."[133] IML is not, however, a legal regime that stands on its own. Instead, it is a discipline "built on norms existing in different legal fields," taken from varied aspects and fundamentals of international law.[134] Human rights law, labor and employment law, and consular law are some of the branches of international law that are touched on.

The definition proposed by Vincent Chetail[135] as "the set of international rules governing the movement of persons between states and the legal status of migrants within host states" shows the intrinsic "duality" to migration law, as it annexes both the domestic and the international.[136] Thus, while the "admission of non-citizens" is "traditionally considered" as falling under the "domestic jurisdiction" of states, "the movement of persons across borders is international in nature."[137]

It would, however, be prudent to note that, "supranational governance in the field of migration is, and will remain, resisted by states."[138] There is an important dichotomy between the regulation of immigration and the principle of sovereignty. The majority of "institutions and principles of international law rely, directly or indirectly, on State sovereignty" as it dictates the "supreme authority within a territory."[139] The Global Compact addresses this precept: the final draft outlines "guiding principles" for the agreement, which include national sovereignty. It acknowledges and affirms "the sovereign right of States to determine their national migration policy and their prerogative to govern migration within their jurisdiction, in conformity with international law." This

[132] There are several leading international jurists who have contributed significant publications that outline and address the fundamental principles and complexities of IML including Richard Plender, Vincent Chetail, Richard Perruchoud, and Brian Opeskin, among others. See: *International Law and Migration* (Chetail, Ed., 2016); *Foundations of International Migration Law* (Opeskin, Perruchoud & Redpath-Cross, 2012); *Compendium of international migration law instruments* (Perruchoud & Tömölová Eds., 2007); *International migration law, second revised edition* (Plender, Ed., 1997).

[133] Brown, J., & Dadu, S. (2018). Migrant rights in an age of international insecurity: Exploring the narratives of protection and security in European migration and refugee law. RLI Working Paper No. 29. p. 3.

[134] Chetail, V. (2016). Conceptualizing International Migration Law. *Proceedings of the ASIL Annual Meeting*, 110, 201-204. doi:10.1017/S0272503700102976. p.201

[135] Dr. Chetail is Professor of International Law and Director of the Global Migration Centre at the Graduate Institute Geneva, and has published extensively in the field of IML including the handbook *International Law and Migration* (2016).

[136] Chetail 2016 op. cit. p. 201

[137] Chetail, V. (2014). The transnational movement of persons under general international law-Mapping the customary law foundations of international migration law. *Research handbook on international law and migration*. p. 1

[138] Opeskin et al. 2012 op. cit. p. 10

[139] Besson, S. (2011). Sovereignty. Max Planck Encyclopedia of Public International Law. Oxford Public International Law. Oxford University Press. Retrieved from https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1472.

includes "taking into account different national realities, policies, priorities and requirements for entry, residence and work, in accordance with international law." The role of state sovereignty will remain invariable within the discipline of IML, and an important consideration in any comprehensive legal framework that transcends national borders.

2.3.1.2 Sources of International Migration Law

The sources of IML are based in three levels of norms from customary law, treaty law, and soft law. "…They are mutually reinforcing, [as] each emphasizes a particular aspect of migration and fulfills a specific function."[140] This three-tiered framework, that serves as the basis of IML, will be dissected in the following sections.

Customary international law derives from "widespread State practice, when coupled with a belief that the practice is obligatory"[141] and provides the fundamental principles governing the movement of persons across borders. There are three elements: departure from the country of origin (the right to leave), admission into a foreign state, and subsequent presence therein.

Treaty law further expands upon the general normative framework that customary international law provides. As noted, human rights treaties provide an importance basis for IML in that they codify provisions of customary law. It can be understood that such treaties are generally applicable to everyone, irrespective of nationality or immigration status, and often include specific provisions directed towards non-citizens. This should provide a common legal frame of protection that applies to migrants.

Still, similar to other branches of international law, there is no comprehensive treaty governing all facets of migration. As discussed, the 2018 Global Compact for Safe, Orderly and Regular Migration[142] represents the first comprehensive agreement negotiated intergovernmentally, with UN support, to address all components of international migration, albeit a "non-legally binding, cooperative framework."[143] Additionally, it was not universally endorsed.[144]

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[140] Chetail 2016 op. cit. p. 202

[141] Opeskin et al. 2012 op. cit. p. 11

[142] See Chapter 2, Section 2.2

[143] There have been, however, attempts to "respond to gaps in existing law," such as the International Migrants Bill of Rights which offers a "dynamic blueprint" that aims to protect migrants' rights, "drawing from all areas of international law, including treaty law, customary international law, areas of State practice and best practices." The Bill of Rights was drafted by the Georgetown University Law Center as part of the International Migrants Bill of Rights Initiative (2010). [Georgetown University Law Center (2010). International Migrants Bill of Rights. Georgetown Law Student Series. 7. https://scholarship.law.georgetown.edu/spps_papers/7]

[144] The US, for example, "dropped out of the negotiation process in December 2017" (Newland 2018 op. cit. p.657) as a result of "sovereignty concerns." [Besheer, M. (2018). US Speaks Against Now-Approved Global Migration Compact. Retrieved from https://www.voanews.com/usa/immigration/us-speaks-against-now-approved-global-migration-compact. Accessed July 1, 2019.] Additionally, in the final vote, 5 nations voted against, with 12 abstentions (UN News 2018 op. cit.). While it is clear that "nation-states' tendency is still to make decisions regarding migration affairs in their own capacity," the shared and cooperative implementation of the Compact's objectives could prove an effective tool in reorienting that impulse. [Ünver, O. C. (2017). Migration in International Relations: Towards a Rights-Based Approach with Global Compact? *Perceptions*, 22(4), 85+. Retrieved from http://link.galegroup.com.libdatabase.newpaltz.edu/apps/doc/A550998257/AONE?u=newpaltz&sid=AONE&xid=5bf7874a]

Consequently, IML presents a "segmented approach" that "establishes specialized conventional regimes focusing on specific categories of migrants."[145] This approach emerges from "binding legal commitments voluntarily undertaken by States."[146]

Thus, from a universal point of view, the discipline is grounded in a variety of multilateral treaties addressing specific issues that focus on three defined categories of migrants: refugees and asylum seekers, migrant workers, and smuggled and trafficked migrants.[147] The 1951 Convention Relating to the Status of Refugees, amended by its 1967 Protocol, primarily govern refugees and asylum seekers. The International Labor Organization (ILO) and the UN address migrant workers with three key multilateral treaties.[148] [149] More recently, smuggled and trafficked migrants were the subject of a UN Protocol[150] adopted in 2000.

2.3.1.2.1 Education within the Relevant Multilateral Treaties

While the student migrant does not represent a directly annunciated block in the context of the preceding treaties, since the pursuit of international study is the determining characteristic of such migrants, access to education is the relevant focal point. Thus, analyzing how education is regulated in the context of the aforementioned treaties will be helpful for subsequent discussions. The central question, which will be further developed in the context of the fundamental principles that guide student migration, is whether the right to education includes the right to migrate to access it. This section will delve into the preceding multilateral treaties covering first, refugees and asylum seekers, then, migrant workers, and finally, smuggled and trafficked migrants.

The right to education is enshrined in a range of international conventions,[151] with education commonly understood as formal institutional instruction. From a general perspective, education in international law is organized into three planes: first primary education, then secondary education, which includes technical and vocational education, and finally, higher education.

[145] Chetail 2016 op. cit. p. 202
[146] Opeskin et al. 2012 op. cit. p. 11
[147] Chetail 2016 op. cit. p. 202-203
[148] The 1949 Convention Concerning Migration for Employment (No. 97) together with the 1975 Convention Concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (No. 143) establish "a framework for guidance on what should constitute the basic components of a comprehensive labour migration policy" as well as appropriate measures for "the protection of migrant workers." [ILO Background Note for the Global Forum on Migration and Development. (2007). Rights, Labour Migration and Development: The ILO Approach. Retrieved from file:///Users/sarahreilly/Downloads/gfmd_brussels07_contribution_ilo_rights labour mig and dev en.pdf. Accessed June 5, 2019.]
[149] The 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families furthers "the principles and standards set forth in the relevant instruments" developed by previous Conventions (No. 97 and No. 143, among others). It should be noted, however, that conventions dealing with migrant workers (such as the 1990 Convention) continue to suffer from a low number of ratifications among states, especially Western states.
[150] The 2000 Protocol Against the Smuggling of Migrants by Land, Sea and Air and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children aimed at "effective action to prevent and combat the smuggling of migrants by land, sea and air" through "a comprehensive international approach" that includes cooperative response.
[151] See Chapter 2, Section 2.4.1

Turning our attention to refugees, Article 22 of the 1951 Convention discusses public education and reinforces the right to primary education, stating "1. The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education. 2. The Contracting States shall accord to refugees treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, **with respect to education other than elementary education and, in particular, as regards access to studies**, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships." While higher education is not specifically annunciated here, and student migrants are not necessarily the focus of this convention, it establishes, in the context of refugees, a right to education other than elementary education, along with access to studies.

With regard to multilateral treaties that address migrant workers, Article 11 of the 1975 Convention Concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (No. 143) defines the term migrant worker and excludes those coming for purposes of education in Part II Equality of Opportunity and Treatment. In particular:

> 1. For the purpose of this Part of this Convention, the term migrant worker means a person who migrates or who has migrated from one country to another with a **view to being employed** otherwise than on his own account and includes any person regularly admitted as a migrant worker.
> 2. This Part of this Convention **does not apply to**…
> (d) **persons coming specifically for purposes of training or education**.

That said, the question can be raised as to whether international students who migrate from one country to another first to study, but with the *long-term* view of being employed, bleed into the category of migrant worker as defined by the 1975 Convention. Within the "education and migration interaction framework" there exist diverse "direct and indirect impacts that education produces on migration" since it is "universally recognised as a driver of migration as it creates openness to, as well as opportunities for, employment abroad."[152] This potential blurring of differentiations harkens back to the idea that identifying student migrants exclusively as students, and not as potential workers for example, is limiting and problematic.

Alternative to the 1975 Convention, the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families reinforces basic human rights, including that of access to education. Article 30 stipulates:

Each child of a migrant worker shall have the basic right of access to education on the basis of equality of treatment with nationals of the State concerned. Access to public pre-school educational institutions or schools shall not be refused or limited by reason of the

[152] Fargues 2017 op. cit. p.5

irregular situation with respect to stay or employment of either parent or by reason of the irregularity of the child's stay in the State of employment.

Article 43 further develops the principle of equality of treatment:

> 1. Migrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to:
> (a) **Access to educational institutions** and services subject to the admission requirements and other regulations of the institutions and services concerned.

These articles establish the right to access to education, against the backdrop of equality of treatment, though higher education is again not specifically addressed. However, the 1990 Convention does "reaffirm" seminal principles outlined by the 1960 Convention against Discrimination in Education, an agreement that defines education comprehensively.

Article 1 of the 1960 Convention outlines an inclusive understanding of the right to education. Meaning, all people have the right to all levels of education, which includes higher education. It stipulates:

> 1. For the purposes of this Convention, the term 'discrimination' includes any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, **national or social origin**, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education and in particular: (a) **Of depriving any person or group of persons of access to education of any type or at any level**;
>
> 2. For the purposes of this Convention, the term 'education' refers to **all types and levels of education**, **and includes access to education**, the standard and quality of education, and the conditions under which it is given.

It is here that a link can be established between the right to education, including higher education, and the right to access it—potentially, through migration. If higher education is inadequate or unavailable in one's country of origin, the capacity to access it should not be limited to national borders. While student migrants are not necessarily the focus of these conventions as they center on three wider blocks of migrants (refugees and asylum seekers, migrant workers, and smuggled and trafficked migrants) by reaffirming seminal principles found in education-focused international conventions, the right to education, including higher education, as well as the right to access it, it can clearly be inferred. The full extent of the scope of the right to higher education will be further discussed later on in the context of the fundamental principles that guide international student migration.

2.3.2 Soft Law and International Migration

The third pillar of IML, beyond customary international law and treaties, is soft law, or "non-binding instruments (declarations, resolutions, and guidelines) adopted by States

and international organizations."[153] IML is made up of several legally binding treaties, but also a variety of bilateral, regional and international "manifestations" of soft law. Together they provide essential guidance for managing particular aspects of international migration.[154]

2.3.2.1 The Role of Soft Law in the Regulation of Migration

Soft law plays an increasingly important role in the international system[155] and is a key component of international migration law. Generally based in "guidelines of conduct" that are "neither strictly binding nor completely irrelevant," its significance is grounded in the fact that it often works to bridge the gap "between law and politics,"[156] and includes a variety of non-binding instruments (such as UN declarations, decisions of the UN Human Rights Committee, and conclusions of UNHCR's Executive Committee), [157] as well as political agreements and other types of non-binding international agreements. It has been argued that the current "hard law system" regulating the migration of people is "not equipped to handle the complexities of population movements" and that an "adequate transformation of these often static legal regimes is improbable."[158] Hence, soft law is an important tool for addressing the circumstances of those who currently do not fit into established protection frameworks.

While non-compliance with "full-fledged law" would signify a breach of international law, non-binding agreements are often easier to negotiate because they imply less obligation for states, and are thus seen as "less threatening to state sovereignty."[159] These soft law mechanisms often move faster as they sidestep long and sometimes politically motivated debates surrounding domestic ratification, and can make use of non-state actors (such as legal experts) to move the process along (for example, by drafting documents). Soft law is often employed "to supplement or to fill gaps in binding international law, rather than as a substitute for binding law."[160] That said, relying on varied initiatives might provoke, or at least contribute to, "a fragmentation of protection systems, resources, and attention."[161] Utilizing soft law to "supplement" hard law is positive as it offers more inclusivity, however, the potential "fragmentation" of initiatives holds negative implications. For example, particular vulnerable groups could fall through the cracks if a piecemeal system doesn't provide an expansive safety net. Additionally, different organizations and initiatives have different established procedures and nomenclature referring to migrants, which complicates collaboration and integration.

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[153] Opeskin et al. 2012 op. cit. p. 11
[154] Ferris, E., & Bergman, J. (2017). Soft law, migration, and climate change governance. *Journal of Human Rights and the Environment*, *8*(1), 6-29.
[155] Shaffer, G. C., & Pollack, M. A. (2009). Hard vs. soft law: Alternatives, complements, and antagonists in international governance. *Minn. L. Rev.*, *94*, 706.
[156] Malanczuk, P. (1997). Akehurst's modern introduction to international law. Routledge. p.54
[157] Hillgenberg, H. (1999). A fresh look at soft law. *European Journal of International Law*, *10*(3), 499-515.
[158] Ferris & Bergman 2017 op. cit. p. 6
[159] Hillgenberg 1999 op. cit. p. 504
[160] Shelton, D. (Ed.). (2003). *Commitment and compliance: The role of non-binding norms in the international legal system*. Oxford University Press on Demand. p.10
[161] Ferris & Bergman 2017 op. cit. p. 6

The most significant soft law instrument, the 2018 Global Compact, aims to address these shortcomings by covering all aspects of international migration comprehensively as a "non-legally binding, cooperative framework." While the Compact was an agreement between governments, "civil society advocates for migrants' rights were actively engaged in all phases of its development."[162] Additionally, one of the "guiding principles" of the agreement speaks to a "whole-of-society approach," aimed at promoting "broad multi-stakeholder partnerships to address migration in all its dimensions by including migrants, diasporas, local communities, civil society, academia, the private sector, parliamentarians, trade unions, National Human Rights Institutions, the media and other relevant stakeholders in migration governance." This principle highlights the importance of a multifaceted course of action that relies on the collaboration of diverse participants.

Initiatives that guide responses to migrants caught up in crises, either disasters or conflicts, are other examples of State-led processes aimed at creating new migration-related soft law. While there are a variety of instruments developed to inform on the establishment of general principles and operational guidelines for specific migrant groups, most of these soft law endeavors are geared towards participants of irregular migration that fall outside legal constructions that are already in place.[163]

2.3.2.2 The Specificity of International Educational Agreements

Within the realm of regular migration, international educational agreements are one of the soft law instruments in IML particular to student migrants. As discussed, bilateral, regional and universal "manifestations" of soft law exist within international law, and these instruments have increased in the last decades through the inclusion of more actors, as well as an increasing need for agreements that address specific circumstances and scenarios. International educational agreements are a specific form of soft law within this course of analysis.

In this context is the case of the 1990 World Declaration on Education for All and its supplementary Framework for Action to Meet Basic Learning Needs,[164] both of which have been "useful guides for governments, international organizations, educators and development professionals in designing and carrying out policies and strategies to improve basic education services." Subsequently, the 1998 World Declaration on Higher Education for the 21st Century: Vision and Action,[165] "put forward key principles to guide higher education developments worldwide."[166] The tenets of "solidarity and true partnership" among higher education institutions were highlighted as foundational for education and training so as to promote an "understanding of global issues" as well as to stress the

[162] Tennant, E., & Wolff, C. (2018). Civil society and the struggle for a rights-based global compact. *Global Social Policy*, *18*(3), 343-348.
[163] Climate refugees, for example, are a category of migrant that is not specifically addressed in international agreements and face difficulties in being classified as refugees and attaining legal status. See Jolly & Ahmad (2019); Hartmann (2010); Biermann & Boas (2008); among others.
[164] Adopted by the World Conference on Education for All Meeting Basic Learning Needs; Jomtien, Thailand 5-9 March 1990.
[165] Adopted by the World Conference on Higher Education, 9 October 1998.
[166] Knight, J. (2006). *Higher education crossing borders: A guide to the implications of the general agreement on trade in services (GATS) for cross-border education*. Commonwealth of Learning, Vancouver and UNESCO. p.7.

importance of "living together with different cultures and values."[167] This speaks to the critical role of international study as a means to achieving certain key objectives that guide higher education and its policies and strategies.

The 1998 Declaration goes on to stipulate that, "international co-operation based on solidarity, recognition and mutual support" should work to "govern relationships among higher education institutions," and that, "normative instruments for the recognition of studies" should be put in place so as to "facilitate mobility within and between national systems." Additionally, as part of the Framework for Priority Action for Change and Development of Higher Education "actions at the national level" section, the Framework indicates that, "States, including their governments, parliaments and other decision-makers" should work to "promote and facilitate national and international mobility of teaching staff and students as an essential part of the quality and relevance of higher education." These are important guidelines that seemingly establish a frame of reference for States on the development and implementation of international educational agreements.

There are also regional governance efforts in the context of international education. The Bologna Process in Europe is a prime example, aimed at creating a coherent and compatible system of higher education inside the EU.[168] The Process' objectives include structuring higher education into a "three cycle system," bolstering "quality assurance," as well as offering "easier recognition of qualifications"[169] in an effort to streamline academic mobility processes within the EU. "From a policy and juridical perspective, the Bologna Declaration should be seen as a general policy agenda, the outcomes of which are largely driven by the powers of the national governments and other stakeholders" who possess "considerable leeway" when following the objectives.[170] Additionally, non-governmental actors are not permitted to "make political decisions" within the Bologna Process, as it is "a right reserved for the states," but there is the "opportunity to influence the agenda or frame certain decisions" specifically in regard to the "deliberation and monitoring" of the Process, with universities playing "a prominent role in the implementation."[171] The Bologna Process is a good example of a regional manifestation of soft law in the context of international education that includes the influence and semi-inclusion of diverse actors.

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[167] Article 15 promotes "sharing knowledge and know-how across borders and continents" and elaborates on the concept as follows: (a) The principle of solidarity and true partnership amongst higher education institutions worldwide is crucial for education and training in all fields that encourage an understanding of global issues, the role of democratic governance and skilled human resources in their resolution, and the need for living together with different cultures and values. The practice of multilingualism, faculty and student exchange programmes and institutional linkage to promote intellectual and scientific co-operation should be an integral part of all higher education systems.

[168] The Bologna Declaration of 19 June 1999 was a Joint declaration of the European Ministers of Education.

[169] European Commission. (2019d). The Bologna Process and the European Higher Education Area. Retrieved from https://ec.europa.eu/education/policies/higher-education/bologna-process-and-european-higher-education-area_en. Accessed July 1, 2019.

[170] Huisman, J., & Van der Wende, M. (2004). The EU and Bologna: are supra-and international initiatives threatening domestic agendas?. *European journal of education*, *39*(3). p.352

[171] Verger, A., & Hermo, J. P. (2010). The governance of higher education regionalisation: comparative analysis of the Bologna Process and MERCOSUR-Educativo. *Globalisation, Societies and Education*, *8*(1), 105-120.

Within the context of international study, institutions of higher education also represent critical actors in the global scene. Such institutions must adhere to national laws and should be guided by local regulations, but mainly operate independently when agreements are signed for academic cooperation. In establishing direct relationships and holding negotiations with external institutions or even foreign governments, the setting and formalities seem to qualify as international agreements, but not entirely. International agreements are widely understood to be formal commitments between countries, not necessarily institutions of higher education. Still, scholars have highlighted such institutions' increasingly important role and autonomy. Universities "…are moving beyond sovereignty but they may still be regarded as national representatives." In this realm it is essential that "institutions develop protocols that recognize all the details, promises, and expectations that are critical to both parties before signing."[172] However, this extended role and dynamic raises questions, not limited to what is the legal recourse for resolving potential issues or the failure to fulfill obligations. As with other areas of international student mobility, bilateral agreements and exchange programs between governments or universities vary widely. This diversity causes problems in regulating or even comparatively analyzing what occurs in different spheres.

Nonprofit organizations also participate in facilitating international educational agreements. In the US, for instance, the Institute of International Education (IIE) offers services to institutions to guide them in the development of international partnership opportunities. The IIE's International Academic Partnership Program (IAPP), for example, is a "major initiative" with the aim of "increasing the number of international partnerships between higher education institutions in the US and those abroad" through training participants (i.e. academic institutions) in "strategic planning" tactics so as to assist in the implementation of international partnerships.[173] However, the IIE's role in such partnerships is intermediary at best, and it is unclear what the legal nature of any resulting partnerships between independent institutions would be.

Two final points to consider: first, the historical context of international educational agreements, and second, their role as facilitators or providers of educational services in the context of international trade.

First, while instruments of soft law have increased in the last decades through the involvement of more actors and interests, spurring, in part, the onset of a wide variety of types of agreements and exchange programs, historically, international educational agreements were predominately State-led initiatives and programs.[174] Of interest is how they have evolved through new modes of negotiation and agreement making. Demonstrative of this is when, in 1965, France and Quebec signed "an entente on exchange and co-operation in the field of education." It was significant "not only because of the subject matter," but because at the time they represented new types of relationships

[172] Peterson, P. M. (2014). Diplomacy and education: A changing global landscape. International Higher Education, (75). p.4.
[173] Institute of International Education. (2019b). Building International Partnerships, Featured Programs and Regions. Retrieved from https://www.iie.org/Work-With-Us/Build-International-Partnerships/Build-International-Partnerships. Accessed June 12, 2019.
[174] See Chapter 3, Section 3.3

between, for example, "a political subdivision of a federal state with a foreign unitary state" and "in the relationships of the political subdivision with its own central government in regard to treaty-making powers."[175] If a province or region "could enter into an agreement with a foreign state without the prior consent of the Federal Government" posed questions, but through a correspondence between the French government and the Federal Government in Canada, the agreement had "international effect."[176] While this is not an instrument of soft law but an international treaty, this particular case is a good illustration of how these types of agreements have evolved to include additional actors and new modes of facilitating accords, and can in fact have standing in international law.

A final element to this discussion centers on educational services in the context of international trade. For instance, bilateral academic agreements that facilitate or provide education services can also be understood as being governed by international trade agreements, which presents additional complexities concerning regulation. Questions arise regarding "the legal roles and responsibilities of the participating partners in terms of academic, staffing, recruitment, evaluation, financial and administrative matters" as new and additional "providers, partnerships… and delivery modes are challenging national and international policies and regulatory frameworks."[177] The basic rules of GATS (General Agreement on Trade in Services), which is not a soft law instrument but a multilateral treaty under the WTO, establish certain "modes of supply" including what would be deemed as "consumption abroad," which means "the provision of a service where the consumer moves to the country of the supplier,"[178] such as in the case of international students. If educational services are subject to GATS, providers need to adhere to the legal rules established in the agreement for international trade. It should be noted that, while each country "determines the type and extent of its commitments for each sector,"[179] and agreements and exchange programs between governments or universities vary widely, GATS does provide a legal recourse through dispute settlement procedures. This should be taken into consideration for policy-makers in national contexts as well as institutions of higher education when entering into international educational agreements.

2.4 THE FUNDAMENTAL PRINCIPLES OF INTERNATIONAL STUDENT MIGRATION

To contextualize the concept of international students as migrants through the lens of international norms, the previous sections delineated the components that make up the discipline of IML: customary law, a variety of multilateral treaties, and a range of soft law instruments. This next section seeks to discuss the principles central to international migration that include the right to leave, the right to admission and the rights afforded to migrants in host countries. Additionally, since access to education is inherently linked to the discussion of international student mobility, the scope of the right to higher education will be further developed. While student migrants are not necessarily the focus of the

[175] Fitzgerald, G. F. (1966). Educational and Cultural Agreements and Ententes: France, Canada, and Quebec--Birth of a New Treaty-Making Technique for Federal States?. *American Journal of International Law*, 60(3), 529-537.
[176] Ibid. p. 532
[177] Knight 2006 op. cit. p.25
[178] Ibid. p.30
[179] Schneider, H. (2019). GATS Overview Document. *Latvia's representative to the Council of Europe - Academic Information Center*. http://www.aic.lv/rec/Eng/new_d_en/gats/GATS_ovw.html

multilateral treaties analyzed in the previous sections (they centered on three broad categories of migrants—refugees and asylum seekers, migrant workers, and smuggled and trafficked migrants), by reaffirming seminal principles found in education-focused international conventions, the right to education, including higher education, as well as the right to access it, is inferred. Building on prior arguments, this portion aims to address how international student mobility interacts with the core principles of IML.

2.4.1 The Scope of the Right to Higher Education

Since the pursuit of international study is the determining characteristic of student migrants, to understand the fundamental principles that guide international student migration, it is first necessary to examine the scope of the right to higher education. A central question is if this includes the right to access higher education, potentially through migration. This sections aims to first situate the formulation of the right to higher education within international law, and then expand upon earlier analysis[180] to argue that the right to higher education includes the right to migrate to access it.

The right to education is an established human right enshrined in a variety of international conventions, including the Universal Declaration of Human Rights (Article 26) and the 1966 International Covenant on Economic, Social and Cultural Rights (Articles 13 and 14). This right has been echoed in a range of other international conventions as well.[181]

Education is defined as formal institutional instruction, and the right to education, as identified by instruments of international human rights makes reference mainly to education in this manner. Article 26 of the Universal Declaration of Human Rights establishes that "Everyone has the right to education… Elementary education shall be compulsory. Technical and professional education shall be made generally available, and **higher education shall be equally accessible to all on the basis of merit**." The Declaration affirms that the right applies to all individuals, but children are often considered the principal focus.[182] It states "education shall be free" and "compulsory," at least with regard to "the elementary and fundamental stages."

While the Declaration establishes the right to higher education, it is with the proviso of "merit." This is problematic as merit is a relative term that is not defined, and how it is evaluated is unclear. Aside from obvious concerns about the role of inequality in

[180] As previously stated, the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families "reaffirms" seminal principles outlined by the 1960 Convention against Discrimination in Education, an agreement that defines "education" comprehensively, thus offering an interpretation of the right to education that includes higher education.

[181] The preamble of the 1960 UNESCO Convention against Discrimination in Education "recalls" the Universal Declaration of Human Rights in its assertion of the principle of non-discrimination, and "proclaims that every person has the right to education." The right to education is also enshrined in Article 2 of the first Protocol of 20 March 1952 to the European Convention on Human Rights, Article 17 of the African Charter on Human and Peoples' Rights, Article 13 of the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social, and Cultural Rights (the Protocol of San Salvador), Article 10 of the 1981 Convention on the Elimination of All Forms of Discrimination Against Women, Article 28 of the 1989 Convention on the Rights of the Child, and Article 24 of the 2006 Convention on the Rights of Persons with Disabilities.

[182] Beiter, K. D. (2006). *The protection of the right to education by international law: Including a systematic analysis of Article 13 of the International Covenant on Economic, Social, and Cultural Rights*. Leiden: Nijhoff. p.18-22.

achievement (students' backgrounds should be evaluated circumstantially), this question is inherently linked to the discussion of international student mobility. Students from certain countries might be at a disadvantage if being held to the same standards when competing for admission against those educated inside a particular established system. Meaning, merit evaluation criteria may favor host country nationals to the detriment of international students, which could affect their ability to access higher education.

The International Covenant on Economic, Social and Cultural Rights (1966) also recognizes the right to education. As noted, this right is organized into three planes: primary education, secondary education, and higher education. Articles 13 and 14 identify the right to primary education as "compulsory and available free to all," and that secondary education, including technical and vocational education, "shall be made generally available and accessible to all by every appropriate means." The responsibility to develop equitable access to higher education, ideally by the gradual introduction of free higher education, is also identified.

The Covenant also addresses higher education, stating that it "shall be made equally accessible to all, **on the basis of capacity**, by every appropriate means." Similar to the Universal Declaration of Human Rights, this presents accessibility with conditions—in this case, contingent on capacity. As discussed in the Covenant, neither the right to secondary education nor the right to higher education are deemed "universal," but instead speak to a more discretionary or interpretive nature. The Charter of the Organization of American States of 1948 takes a similar approach, stipulating that "higher education shall be available to all, provided that, in order to maintain its high level, the **corresponding regulatory or academic standards are met**."

In contrast to access to primary education, which is seen as obligatory, access to higher education seems subject to interpretation, and ultimately dependent on who determines admissions procedures. As a result, "differential fee levels (relating to differences of quality or prestige) also undermine the requirement for access on the basis of merit or capacity."[183] Since it is often left up to the individual institutions of higher education to determine admissions procedures, the ability to cover the high cost of study factors in. That is to say, whether someone is able to pay for higher education is often intertwined with admission, and thus access to higher education is not solely based on merit or capacity. This erodes the right to access higher education.

The 1960 Convention against Discrimination in Education, however, outlines both a comprehensive understanding of the right to education, including higher education, and protects the right to access it. As discussed, article 1 states that, "the term 'education' refers to **all types and levels of education**, **and includes access to education**." It goes on to say that "discrimination" includes "any distinction, exclusion, limitation or preference which, being based on…**national or social origin**, [or] **economic condition or birth**, has the purpose or effect of nullifying or impairing equality of treatment in education and in particular: (a) **Of depriving any person or group of persons of access to education of**

[183] McCowan, T. (2012). Is There A Universal Right To Higher Education? *British Journal of Educational Studies*. (2012), 60 (2), pp. 111-128.

any type or at any level." Thus, if higher education is insufficient or unsatisfactory in one's country of origin, surely the right to access it transcends national borders. Meaning, the right to higher education and the right to access it should include the right to migrate to access it.

A final point addresses migrants' right to higher education in a host country. A 2010 UN Report on the Right to Education for Migrants, Refugees and Asylum Seekers bolstered the idea that the right to education should in fact include higher education. The report recommends that the right to education "should transcend primary and/or compulsory education, especially if systematic discrimination can be measured between particular social groups in society," specifically in regard to migrants.[184] Students in particular social groups in society who are subject to discrimination may be unable to access higher education.[185] Thus, the call for an expansion of the right to education to include higher education in the context of certain groups such as migrants is significant. The implementation of this recommendation would impact those who are already in a host country and who wish to pursue higher education—another iteration of the student migrant.

In summary, the question as to "whether access to university is a right or a privilege"[186] can be clearly answered in that the right to higher education has been enshrined in a range of international conventions, albeit with provisos. That said, the 1960 Convention against Discrimination in Education clearly establishes a more comprehensive understanding of the right to higher education in that it includes and protects the right to access it. National origin should not impede access to education of any type or at any level, so if higher education is inaccessible in one's country of origin, one should have the right to migrate to access it.

2.4.2 The Right to Leave: The Brain Drain Issue

The first of three fundamental principles central to international migration is the right to leave. This right is enshrined in a range of international and regional human rights instruments, including the Universal Declaration of Human Rights (Article 13)[187] and

[184] United Nations. (2010). UN Report on the Right to Education for Migrants, Refugees and Asylum Seekers. Retrieved from https://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.25_en.pdf

[185] As compared to native students, migrant, refugee and asylum-seeking students in many countries are more likely to be marginalized within education systems and beyond. "Movement across national borders is only one of the many causal factors and mechanisms (social, economic, cultural, physical and psychological) that impact upon migrants, refugees and asylum-seekers in the exercise of their right to education." [UNESCO. (2010). *EFA Global Monitoring Report 2010: Reaching the Marginalized*. Paris and Oxford, UNESCO and Oxford University Press.]

[186] McCowan 2012 op. cit. p. 111

[187] Article 13 of the Universal Declaration of Human Rights states: "Everyone has the right to freedom of movement and residence within the borders of each state. Everyone has the right to leave any country, including his own, and to return to his country." The 1966 International Covenant on Civil and Political Rights (Article 12) broadened this with the proviso that "The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant." [Chetail, V. (2003). Freedom of movement and transnational migrations: A human rights perspective. *Migration and international legal norms*. A. Aleinikoff & V. Chetail, eds., T.M.C. Asser Press, 47-60.] This right is also established in the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (Article 5), the 1973 Convention on the Suppression and Punishment of the Crime of Apartheid (Article 2), the 1989 Convention on the Rights of the Child (Article 10), and the 1990 International Convention on the Protection of the Rights of All Migrant Workers and

includes "both temporary stays abroad (right to travel) and long-term departure from a country (right to emigrate)."[188] In the context of international study, either or both of these classifications could apply.

Human rights relating to freedom of movement refers to those in the realm of States' assertion of jurisdiction over nationals and resident aliens. Meaning, "the international law of jurisdiction is the means by which states allocate competence, between themselves, for the prescription and application of authority over events inside and outside their national boundaries."[189] In this line, "the right to leave is not an absolute right" with the majority[190] of the instruments "provid[ing] for restrictions under certain circumstances," restrictions that are understood to be "permissible when they are: provided by law; **purported to protect the legitimate state interests** and the other rights and freedoms recognized in human rights treaties; and necessary for achieving this purpose."[191] This will be relevant to the brain drain issue and whether or not governments should be able to restrict or limit emigration for the sake of economic development.

Although presently the right to leave is considered "a most important civil right," it is important to keep in mind that, in the past, freedom of movement was thought of not as a "fundamental" right, but a "secondary" right.[192] A crucial academic and political issue in the "post-United Nations era of international human rights law" was to outline differences between "civil and political rights," as well as "economic, social and cultural rights."[193] The 1966 approval by the UN General Assembly of two seminal international covenants[194] served as recognition for the broad range of rights in question. While the fulfillment of basic needs such as sustenance and shelter had been widely accepted, by the mid-1970s, the UN and many scholars were advocating that all human rights were interrelated and no category of rights should override another.[195] The 1970s also brought to the forefront a debate surrounding the right to development, and the argument that "certain economic and or collective rights should have priority over individual civil and political rights."[196] This has led to the question of limiting the right to leave due to economic concerns, principally related the brain drain.

Members of their Families (Article 8). Regional instruments include Protocol No. 4 to the European Convention on Human Rights (Articles 2 and 3), the 1961 European Social Charter (Article 18), the 1977 European Convention on Legal Status of Migrant Workers (Article 4), the 1948 American Declaration of the Rights and Duties of Man (Article VIII), the 1969 American Convention on Human Rights (Article 22), the African Charter on Human and Peoples' Rights (Article 12) and the 1994 Arab Charter on Human Rights (Article 21).

[188] Chetail 2003 op. cit. p. 54

[189] Higgins, R. (1973). The right in international law of an individual to enter, stay in and leave a country. *International Affairs (Royal Institute of International Affairs 1944-)*, *49*(3), 341-357.

[190] The exceptions are the Universal Declaration of Human Rights, the American Declaration of the Rights and Duties of Man, and the Arab Charter on Human Rights that outline only "general provisions" without restrictions (Chetail 2003 op. cit. p. 55).

[191] Ibid. p. 55

[192] Hannum, H. (1987). *The right to leave and return in International Law and practice* (Vol. 8). Martinus Nijhoff Publishers.

[193] Vincent-Daviss, D. (1981). Human Rights Law: A Research Guide to the Literature--Part I: International Law and the United Nations. *NYUJ Int'l L. & Pol.*, *14*, 209.

[194] The International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social and Cultural Rights (1966)

[195] UN General Assembly Resolutions 32nd Session. (1977). A/RES/32/66. Retrieved from https://undocs.org/en /A/RES/32/66. Accessed October 2, 2018.

[196] Hannum 1987 op. cit. p. 34

As discussed, the term was first used in the latter part of the 20th century referring to the migration of skilled workers and has since evolved to mean the movement of skilled individuals from less developed or developing regions to more industrialized countries. While the emigration of highly trained individuals from a country is commonly understood as a brain drain, points of intersection between student migration and the concept of brain drain can be identified. With an accelerating demand for higher education, universities in developing countries have been increasingly unable to offer sufficient places for interested students, pushing more and more talented young people towards studying abroad.[197] Economic incentives such as higher salaries motivate many skilled migrants, but inadequate educational systems in developing countries and the subsequent lack of employment after completing an advanced degree can also contribute significantly to outward migration.

Therein lies the debate: whether or not an individual's right to leave in search of work, study, or a better standard of living supersedes that of the "rights" developing countries have to improve their economic and societal conditions. Meaning, should governments be able to restrict or limit emigration in the name of economic development? Some argue that prohibiting the emigration of certain classes of skilled or professional workers violates the right to leave.[198] Alternatively, critics argue that the brain drain should not be categorized as a problem of human rights as it is a separate occurrence.[199] According to Vas-Zoltan,[200] it is better described as a phenomena resulting from international relations and the technological revolution, and while its regulation is important, it doesn't pertain to the area of human rights. In a broader context this discussion illustrates one way in which debates linked to international student mobility intersect with, and call into question, concerns surrounding the protection of rights.

In the context of the transatlantic sector, for example, there is evidence that this issue does in fact occur with highly qualified European workers. It has been argued that Europe has not been able to "compete against the United States in attracting talented people because of high taxes and complex regulations,"[201] and a 2008 study done in cooperation with the Leibniz Institute for Economic Research at the University of Munich bolstered that idea. In looking at European-born immigrants in the US labor market from six countries (Belgium, France, Germany, Italy, Spain, and the United Kingdom) the study found that individuals' "skill level is substantially higher than in Europe," there was a "positive wage premium," and that they have "a high employment rate and represent a

[197] It is important to reiterate, however, that the phenomenon of brain drain can confuse mobile students with highly skilled permanent migrants. The difference is that the latter are usually educated in their country of origin but tend to stay in the host country; "the aim of their relocation is work, not education." (Wells, 2014) As a result, highly skilled migrants have a clear role in the brain drain, but while mobile students can be included in certain contexts, they do not necessarily follow the same patterns.
[198] Hannum 1987 op. cit. p. 36-37
[199] Ibid. p. 38
[200] Vas-Zoltan, P. (1976). The Brain Drain: An Anomaly of International Relations. Budapest: Akademiai Kiado. p.26-30.
[201] Saint-Paul, G. (2008). The brain drain: Some evidence from European expatriates in the United States. CESifo Forum, ISSN 2190-717X, ifo Institut für Wirtschaftsforschung an der Universität München, München, Vol. 09, Iss. 3, pp. 19-27.

high proportion of entrepreneurs." Proportionately, there were also many more European PhDs working in the US, which is significant "if one considers that a country's potential for growth and innovation is chiefly determined by key individuals – scientists, managers and entrepreneurs – and that a large proportion of the most talented have moved to the United States."[202]

Within Europe there is also evidence of intra-European brain drain,[203] most notably with regard to individuals leaving Southern and Eastern Europe for other countries. There seems to be a "growing concentration" of the "brightest minds" going to the countries "that have dedicated more attention and resources to scientific research, such as Germany or the United Kingdom, at the expense of others such as Greece, Italy, or Spain."[204] While the majority of these studies address labor markets, and not necessarily international students, education directly impacts migration as it is understood that, "the more educated [the individual] the higher the probability of migrating."[205] International study also often acts as a gateway for working abroad, as it is linked to an "increased likelihood" of working internationally.[206] However, it is still unclear as to whether this specific problem would be necessarily classified as a human rights dilemma, or if it is a separate issue.

2.4.3 Admission

The second fundamental principle central to international migration is the right of admission. While States formerly had "no obligation under international law regarding the admission of aliens and the conditions for admission,"[207] changes in the international legal sphere have altered that precept. "In much of the world, States cannot any longer devise and maintain their immigration and emigration laws without regard to a substantial body of international commitments in which they have engaged," and instead "must now keep abreast of the applicable international rules" in migration law.[208] States are somewhat obligated "to participate in international relations" and thus aren't able to wholly "exclude aliens from their territory," even though "restrictions under international law are only fragmentary," with only the most severe restrictions acknowledged, such as "abuse of rights, non-discrimination and severely endangering an alien's life."[209]

Consequently, the international system for "governance of migration" offers "little definitional clarity" by way of admission of migrants, and is instead "largely the responsibility of national authorities."[210] Nationality, admittance, expulsion, or extradition requirements generally fall within the realm of domestic law. "Rules on restrictions of discretionary domestic decisions" established under public international law, however,

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[202] Ibid. p. 25
[203] See Hasselbalch (2019); Saint-Blancat (2019); Mayr & Peri (2009);
[204] Saint-Blancat, C. (2019). Italy: Brain Drain or Brain Circulation?. *International Higher Education*, (96), 10-11.
[205] Fargues 2017 op. cit. p.5
[206] Di Pietro, G. (2012). Does studying abroad cause international labor mobility? Evidence from Italy. *Economics Letters*, *117*(3), 632-635.
[207] Gogolin, J., & Hailbronner, K. (2013). Aliens. Max Planck Encyclopedia of Public International Law. *Oxford Public International Law*. Oxford University Press. Retrieved from https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e744.
[208] Plender, R. (Ed.). (1997). *International migration law, second revised edition*. Martinus Nijhoff Publishers. p.xv
[209] Gogolin & Hailbronner 2013 op. cit. (no pagination)
[210] Ferris & Bergman 2017 op. cit. p. 9

still must be "taken into account."[211] Thus, while "territorial supremacy, as recognised under public international law, permits states to exercise discretion in stipulating entry conditions applicable to aliens… this right is curtailed by international legal obligations to which a state is bound."[212] Concretely, customary international law establishes substantive as well as procedural requirements for the admission of non-citizens. This includes "the prohibition of collective expulsion, the prohibition of arbitrary detention, and access to consular protection."[213]

A universal treaty regarding admission or residence of aliens has not yet been achieved,[214] but several bilateral and multinational treaties are in place. The right of admission may be authorized through regional agreements, as well as bilateral or multinational treaties that establish a particular legal structure. For instance, the European Union and its system of laws as it relates to the free movement of people.[215] Finally, the right of admission and/or residence often originates from or coincides with treaties addressing other subject matters, such as human rights.

In the context of student migrants, differing approaches are often the result of how national governments choose to address diverse needs and changing political climates. Within this context, skills and qualifications—largely the result of higher education degrees—have become increasingly integral to the selection and admittance procedures of migrants in many countries.[216] In fact, "studying is a way of becoming a desirable (knowledgeable) migrant."[217] Many countries rely heavily on skills and qualifications to create parameters for entry, stay, or eventual adjustment of status. Thus, facilitating more direct pathways to legal status post-study is an important way to addressing future scenarios facing student migrants, as well as any potential displacement. Allowing international students to seek permanent residency upon completion of their courses, without having to return home first and then apply, is a way of bridging the gap.

2.4.4 Migrants in Host Countries (Residence)

The third fundamental principle central to international migration addresses the rights afforded to migrants in host countries. Just as States have certain rights and obligations to their nationals, they also have rights and obligations to aliens in their territories. In this way, "the legal status of aliens" and the corresponding laws have "traditionally" been guided by international law.[218] There is first the *international minimum standard* which covers all categories of migrants as a rule of customary international law: it "governs the treatment of aliens by providing for a minimum set of principles which States, regardless

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[211] Gogolin & Hailbronner 2013 op. cit. (no pagination)
[212] Eisele, K. (2014). *The external dimension of the EU's migration policy : different legal positions of third-country nationals in the EU : a comparative perspective*. Leiden, Netherlands: Brill Nijhoff. Retrieved from https://suny-new.primo.exlibrisgroup.com/permalink/01SUNY_NEW/hqklb6/brill_sB9789004265257_s010. p.1.
[213] Chetail 2016 op. cit. p. 202
[214] While the 2018 Global Compact represents the most comprehensive intergovernmental agreement on migration to date, it is a "cooperative framework" and not legally binding. See Chapter 2, Section 2.2
[215] See Chapter 2, Section 2.5.2.1
[216] Williams, A. M. (2007). International labour migration and tacit knowledge transactions: a multi - level perspective. *Global Networks*, *7*(1), 29-50.
[217] Raghuram, P. (2013). Theorising the spaces of student migration. *Population, Space and Place*, *19*(2), 138-154.
[218] Gogolin & Hailbronner 2013 op. cit. (no pagination)

of their domestic legislation and practices, must respect when dealing with foreign nationals and their property."[219]

Along with the international minimum standard is the principle of non-discrimination, also framed by customary law, which prohibits "any difference of treatment that is not reasonable, objective, and proportionate."[220] This principle has also been incorporated in Human Rights Treaties including the Universal Declaration of Human Rights, among others.[221]

However, that does not necessarily mean "that the responsibility of governments toward foreigners" must be on par with that which they "have towards their own citizens."[222] This distinction can mean that migrants do not always possess the same social protections or benefits allotted to citizen. The case of international students in Spain can be taken as an example: students can remain legally in the country for extended periods of time under a special visa category, but said category is separate from that of "permanent resident." Students have limited access to social services and benefits, and do not share the same level of social protection that is afforded to those with legal residence in Spain.[223] This scenario thrusts international students into an in-between state in which their long-term status would have to change to be able to take advantage of full social protections.

In short, the rights afforded to student migrants are determined by individual States and are thus not codified as universal. As the Global Compact reiterates and affirms, the domestic jurisdiction of states still governs procedure. There is an inherent "sovereign right" for States to "determine their national migration policy and their prerogative to govern migration within their jurisdiction, in conformity with international law," and thus the capacity to consider "different national realities, policies, priorities and requirements for entry, residence and work." Ultimately, while States are compelled to not discriminate, they are within their right to determine policy within their jurisdiction, which applies to student migrants as well. The latter half of the chapter will address precisely that: how

[219] As stated in a 2004 OECD Working Paper on International Investment. [OECD. (2004). "Fair and Equitable Treatment Standard in International Investment Law", *OECD Working Papers on International Investment*, 2004/03, OECD Publishing. http://dx.doi.org/10.1787/675702255435. p. 8.]

[220] Chetail 2016 op. cit. p. 202

[221] Article 2 prohibits "distinction of any kind," and Article 7 states, "All are equal before the law and are entitled without any discrimination to equal protection of the law." The right to equality and non-discrimination is also recognized in the International Covenant on Civil and Political Rights (Articles 2 and 26), the International Covenant on Economic, Social and Cultural Rights (Article 2), the United Nations Convention on the Rights of the Child (Article 2), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Article 7), as well as the Convention on the Rights of Persons with Disabilities (Article 5). Additionally, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on the Elimination of all Forms of Discrimination Against Women are seminal UN human rights treaties "established explicitly to prohibit discrimination," on the basis of race and gender, respectively. [Icelandic Human Rights Centre. (2019). The Right to Equality and Non-discrimination. Retrieved from http://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/substantive-human-rights/the-right-to-equality-and-non-discrimination. Accessed August 2, 2019.] Regional instruments also articulate this principle, such as the American Declaration of the Rights and Duties of Man (Article 2), the American Convention on Human Rights (Article 24) and the African Charter on Human and Peoples' Rights (Articles 2 and 3).

[222] Sánchez Mussi, A. (2008). International Minimum Standard of Treatment. Retrieved from https://asadip.files.wordpress.com/2008/09/mst.pdf. p.4.

[223] del Álamo Gómez, N. (2016). Los estudiantes extranjeros en España. La movilidad internacional por razones de estudio. Doctoral Dissertation. p.23.

national legislation regulates international students from a US perspective, and later, the issues and conversations surrounding international students within the context of regional legislation in the European Union, a circumstance shaped by the mutable relationship between the Member States and the EU.

2.5 THE TRANSATLANTIC SECTOR

The bulk of student migration is destined for the US and Europe, yet there are issues and incongruities with how student migrants are regulated within these systems. If the intent of the previous sections was to highlight and critically analyze different discussions surrounding the student migrant in international migration law from a general perspective, the following sections endeavor to particularize this analysis within the transatlantic sector. To that end, the second half of this chapter will concentrate on national and regional legislation: first, by looking at US regulations for international students, and then, by shifting the focus to the European Union. The objective is to comparatively analyze the legal treatment of student migrants in the transatlantic sector, identifying deficiencies and implications, with the ultimate goal of highlighting areas where better policy measures would be useful.

The United States is a country built on immigration, a country that has experienced a "massive polyglot flow of Europeans"[224] to its borders throughout the various periods of its history.[225] Similarly, "immigration and emigration processes have shaped the European continent throughout its history"[226] and have played an integral role in forming the European consciousness. However, migration issues, including that of the international student, are complicated by differences in the ease of mobility among regionally integrated systems such as the EU, and between countries, such as the United States and the EU Member States.[227] In the US, while immigration is not explicitly addressed in the US constitution, the power to regulate it is vested in the federal government, a fact that has routinely been upheld by the Supreme Court.

In the EU, however, it is a different matter. Regional integration is a phenomenon within the international system that developed mainly after the Second World War, and consists of the alignment of States, principally for collaborative purposes. In the European Union this integrative process has evolved to signify both supranational as well as intergovernmental "decision-making procedures."[228]

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[224] Keeling, D. (2012). Transatlantic shipping cartels and migration between Europe and America, 1880-1914. *Essays in Economic & Business History*, *17*.

[225] Along with many other national groups from all over the world

[226] Eisele 2014 op. cit. p. 1

[227] Samers & Collyer 2017 op. cit. p. 273

[228] The former refers to the EU institutions that make "binding decisions in their legislative and executive procedures, budgetary procedures, appointment procedures and quasi-constitutional procedures," [Schonard, M. (2019). Supranational decision-making procedures. European Parliament - Fact Sheets on the European Union. Retrieved from http://www.europarl.europa.eu/factsheets/en/sheet/8/supranational-decision-making-procedures. Accessed July 10, 2019.] and the latter chiefly pertains to the Common Foreign and Security Policy, as well as several other areas where there is a "stronger component of intergovernmental cooperation." [Pavy, E. (2019). Intergovernmental decision-making procedures. European Parliament - Fact Sheets on the European Union. Retrieved from http://www.europarl.europa.eu/factsheets/en/sheet/9/intergovernmental-decision-making-procedures. Accessed July 10, 2019.]

While this section juxtaposes national legislation (US) with regional legislation (EU), immigration is a shared competence between the EU and its Member States, and is regulated through directives that co-exist alongside national legislation. Still, there is a wide margin for the Member States. As such, there remains a complex relationship between "transnational regimes" and "domestic legal systems,"[229] and it should be noted that, "forging an EU agenda on migration related issues has encountered, and to some extent is still facing, certain vital structural obstacles that render EU integration in this field a difficult process."[230] In that line, the classification of student migrants in different countries differs greatly, which generates unequal treatment and reporting complications. Even in the case of the Blue Card,[231] an EU-wide policy for migrants, national systems of attracting talent persist, which causes conflicts. This section will examine the complexities of the legal status of the student migrant.

2.5.1 National Legislation in the Transatlantic Sector: The US Perspective

US immigration policy has often instituted restrictions in times of economic stress or political pressure. Its role as a sometimes catalyst, sometimes barrier, to migration trends is critical. In a 2013 Population Reference Bureau report, author Philip L. Martin[232] organizes immigration "waves" to the United States into four distinct periods. The first major surge was made up predominately of British immigrants who arrived in the 1820s. Irish and German Catholics in the 1840s and 1850s made up the second wave, which ended with the US Civil War in the 1860s. The third influx, between 1880 and 1914, was comprised of European immigrants, but slowed as a result of World War I and the immigration quotas of the 1920s. Following the Great Depression, immigration levels remained low during the 1930s and continued to decline until 1960. The fourth wave of immigration to the US began after 1965, marked by many Latin American and Asian immigrants entering the United States.[233] A new era in US immigration began in the late 1980s with *The Immigration Reform and Control Act of 1986*, implemented primarily to address the problem of undocumented foreign nationals.

Each of these periods has been influenced by a complex confluence of factors, such as world events or economic determinants, but US immigration policy remains the principal directive of foreign national admissions.[234]

2.5.1.1 US Immigration Regulations for International Students

In analyzing student and exchange visitor flows into the United States, it is first necessary to understand the legal structures in place to guide such migration. Foreign nationals legally entering the United States can be admitted through *immigrant* or *nonimmigrant* visa categories.

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[229] Bolewski 2007 op. cit. p. 90

[230] Papagianni, G. (2006). *Institutional and policy dynamics of EU migration law*. Brill Nijhoff. Retrieved from https://suny-new.primo.exlibrisgroup.com/permalink/01SUNY_NEW/f51bec/pq_ebook_centralEBC468315. p.322.

[231] See Chapter 2, Section 2.5.2.3.3.

[232] Philip L. Martin is Chair of the Comparative Immigration & Integration Program, University of California, Davis, and a prominent scholar in the field of migration studies.

[233] Martin, P. L. (2013). *The global challenge of managing migration*. Population Reference Bureau. p.5-6.

[234] Reilly, S. (2017). Free trade & migration: the potential implications of the Transatlantic Trade and Investment Partnership (TTIP) on European Union nonimmigrant Admissions to the United States. *Administración & cidadanía: revista da Escola Galega de Administración Pública*, *12*(1), 59-76.

According to the US Department of Homeland Security Office of Immigration Statistics' Yearbook, US immigration law defines *immigrants* as persons from other countries authorized with *legal permanent residence* in the United States. This status enables a foreign national to live and work in the US permanently. A US Permanent Resident Card, also known as the Green Card, is the accompanying document that certifies the permanent resident status of a foreign national in the United States. Immigrants either arrive in the United States with immigrant visas issued abroad or *adjust their status* once in the United States from temporary to permanent residence.[235] Alternatively, *nonimmigrants* are those who are in the United States on an interim basis.[236]

2.5.1.1.1 Nonimmigrants

In contrast to persons with or seeking permanent residence status, *nonimmigrants* are foreign nationals in the United States on a temporary basis. What "temporary" signifies in terms of periods of time is not completely defined, only stating that "the alien must have a permanent residence abroad," leaving the question of length of stay permitted up to what each specific visa classification allots, along with associated renewals.[237] Depending on the purpose of travel to the US, there are different visas and classifications through which a nonimmigrant can have legal status.

Several nonimmigrant visa categories must be taken into consideration **when looking at student and exchange visitor flows to the United States.** The F-1 Visa is for students attending a full-time academic program at a school, college or university and is valid for the full completion of course of study. It also allows students "to work on campus and, in some situations, off campus." The M-1 Visa is for students "enrolled in non-academic or vocational study programs." It is authorized for one year, but students "may apply for extensions for up to three years."[238] The J Exchange Visitor non-immigrant visa category is for those approved to take part in work or study-based exchange visitor programs.

Whilst international students are categorized as temporary migrants, "many eventually become immigrants to the United States," with a "large number" ultimately adjusting their status to permanent resident. Hazen and Alberts[239] investigated if international students "see their stay in the US as temporary or as a *springboard* to permanent immigration." Their findings indicate that "few students arrive in the US with the intention of immigrating permanently" with career-related and economic factors typically incentivizing their stay in the US. "International students are usually admitted to the US on temporary visas, but owing to their desirable skills and the contacts they make during their stay, opportunities exist for many to adjust their status from visitors to

[235] U.S. Department of Justice Immigration and Naturalization Service, (1994). *1993 Statistical Yearbook of the immigration and Naturalization Service*. Washington, D.C.: U.S. Government Printing Office, pp. 4-183.
[236] Reilly 2017 op. cit. p.63
[237] Department of Homeland Security Office of Immigration Statistics. (2019). Definition of Terms. Retrieved from https://www.dhs.gov/immigration-statistics/data-standards-and-definitions/definition-terms#nonimmigrant. Accessed January 15, 2019.
[238] USCIS. (2019a). Students and Employment. Retrieved from https://www.uscis.gov/working-united-states/students-and-exchange-visitors/students-and-employment. Accessed January 12, 2019.
[239] Hazen & Alberts 2006 op. cit. p.201

immigrants once they have completed their degrees."[240] However, the process to adjust one's status, and move from nonimmigrant to immigrant categories, is not without complications, as will be discussed in subsequent sections.

2.5.1.1.2 Immigrants

While student migrants can eventually become immigrants in the US, their visa classification and eligibility would have to change to facilitate that. Nonetheless, the process is laden with complexities. The total number of immigrants admitted annually from a specific country is comprised of *new arrivals* and *adjustments*, or, those who have adjusted their status to permanent residents in that fiscal year. In the case of many countries, these immigrants are subject to a numerical limit, or *cap.* "The Immigration Act of 1990 created an annual flexible cap on immigration of 700,000 during transition fiscal years 1992-94, and 675,000 thereafter (excluding refugee and asylum adjustments and certain other categories)."[241] This cap limits the number of foreign nationals able to adjust their status to permanent resident annually.

An important factor that can affect immigrant admissions is *wait time*. To determine the order in which foreign nationals are eligible to adjust their status to permanent resident, the Immigration and Nationality Act Amendments of October 3, 1965, established a preference system based on categories.[242] The Immigration Act of 1990 amplified the system to include two additional categories, totaling nine.[243] The preference system is a way of allocating the capped number of immigrant visa numbers available each year. Once a foreign national's immigrant visa petition has been approved through the United States Citizenship and Immigration Services (USCIS), he or she must wait for an immigrant visa number to be made available by the US Department of State, according to the limited number of visas allowed in each preference category annually.

The wait time to receive an immigrant visa, or adjust one's status, depends heavily on "…the demand for and supply of immigrant visas, the per-country visa limitations, [as well as] the number of visas allocated for [a foreign national's] preference category."[244] While the various steps to adjusting one's status are beyond the scope of this analysis, it is vital to understand that immigrant admissions entering the United States are directly linked to the volume of total applicants, as well as any backlog of pending applications. Meaning, the number of foreign nationals able to live and work in the US permanently is governed by a complex formula determined by US immigration law and influenced by supply and demand.

The convolutions of becoming a permanent resident are evidenced in the case of student migrants. Only candidates from certain nonimmigrant categories are eligible to

[240] Ibid. p.202

[241] U.S. Department of Justice Immigration and Naturalization Service. (1996). *1994 Statistical Yearbook of the immigration and Naturalization Service*. Washington, D.C.: U.S. Government Printing Office, pp. 4-180.

[242] Immigration and Nationality Act Amendments of October 3,1965. 79 Stat. 911. Washington D.C.: U.S. Government Printing Office.

[243] Immigration Act of November 29,1990. 104 Stat. 4978. Washington D.C.: U.S. Government Printing Office.

[244] USCIS. (2015). Visa Availability and Priority Dates. Retrieved from https://www.uscis.gov/green-card/green-card-processes-and-procedures/visa-availability-and-priority-dates. Accessed February 8, 2017.

adjust their status from visitors to immigrants, and students do not qualify. Student migrants can eventually become immigrants in the US, but since their visa classification would have to change to achieve that, they would technically no longer be deemed "students." Eligibility categories include employment, family, refugee or asylee status, as a victim of human trafficking or crime, or other through specialized programs such as the Diversity Immigrant Visa Program.[245] This reflects the complexities of treating student migrants exclusively as students, since, in this particular case, to be in the "student" nonimmigrant visa classification is incompatible with seeking immigrant status, and thus permanent residence. Moreover, if students are able to change their visa classification, say, to an employment-based category, it is unclear if this evolution in status would be documented in statistical data. The student migrant is a temporary figure in US immigration law that alone does not provide possibilities for long-term stay. However, if regulations were to provide more flexibility in terms of migrant classification it would allow for the other diverse roles of student migrants (for example, as "actual or potential workers"[246]) to be incorporated into the ongoing discussion of migration policy, as well as facilitate easier and more direct paths to immigrant status.

2.5.1.2 Student and Exchange Visitor Information System (SEVIS)

There have been several major regulations affecting international students and scholars in the US. Urias and Yeakey[247] offer a comprehensive timeline that identifies the two primary pieces of legislation: the 1952 Immigration and Naturalization Act (INA) and the 1996 Illegal Immigration Reform and Immigration Responsibility Act (IIRAIRA), with "the latter embedded into the former." The IIRAIRA mandated that INS[248] develop an electronic system to collect foreign student information from colleges and universities.

The aforementioned Acts represented the underlying legislation in place when, in April of 2000, President Bill Clinton pledged commitment to the internationalization of education in a Presidential Memorandum on international education policy. "Today, the defense of US interests, the effective management of global issues, and even an understanding of our Nation's diversity require ever-greater contact with, and understanding of, people and cultures beyond our borders… It is the policy of the Federal Government to support international education."[249] The President affirmed that the government was committed to bringing students from other countries to study in the US, promoting study abroad for US students and improving programs at US institutions that work to build international partnerships. This marked a move towards the development of a US international education policy, and The Departments of State and Education established a joint partnership to carry out the directive.[250]

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[245] USCIS. (2019b). Green Card Eligibility Categories. Retrieved from https://www.uscis.gov/greencard/eligibility-categories. Accessed July 10, 2019.
[246] See Ch. 2, Section 2.2.2; King & Raghuram 2013 op. cit. p.1
[247] Urias, D., & Camp Yeakey, C. (2009). Analysis of the US student visa system: Misperceptions, barriers, and consequences. Journal of Studies in International Education, 13(1), 72-109.
[248] US Immigration and Naturalization Service
[249] Office of the Press Secretary. (2000). International Education Policy Memorandum. Retrieved April 20, 2018 from https://www.nafsa.org/uploadedFiles/NAFSA_Home/Resource_Library_Assets/Public_Policy/president_clinton_issues_1.pdf?n=173. p.1.
[250] Reeves, M.H. (2005). *A descriptive case study of the impact of 9/11 on international student visa policy in the 20 months following the attacks* (Doctoral dissertation).p.2.

A year and a half after Clinton's memo, President George W. Bush signed the USA PATRIOT Act into law in October of 2001 in response to the September 11th terrorist attacks. In "an effort to start better vetting and monitoring foreign visitors," including international students at US institutions, the Act facilitated the adoption of the Student and Exchange Visitor Information System (SEVIS). Additionally, the Patriot Act was "interpreted as requiring the State Department" to compel "electronic evidence by academic institutions" with complete "background data on applicants before issuing student and scholar visas."[251] Some of the impetus for SEVIS was spurred by the fact that the September 11th hijackers had been admitted into the country with student visas.[252] Mandatory use of the system began in January of 2003.

There is much written about the detrimental effects of SEVIS in the years following its implementation.[253] [254] [255] [256] SEVIS allowed the INS "to monitor the status of all foreign students," given the fact that "all nonimmigrant visitors and green-card holders" had to communicate any change of address to their offices. Apart from that, applicants for additional nonimmigrant visa types had to face further vetting procedures, which included screenings by law enforcement and security agency databases. Most contentiously, "all nonimmigrant male visitors between the ages of 16 and 45 from certain (predominately Muslim) countries were required to register with INS offices."[257] Professional educational associations such as NAFSA,[258] the American Council on Education (ACE), and the American Association of Collegiate Registrars and Admissions Officers (AACRAO), among others, had significant objections to SEVIS.[259] NAFSA estimated that "15-30 percent of international students who would have come to the US to study" would opt for other countries like Australia, Canada, or the United Kingdom as a result of SEVIS.[260] The new system also produced a decrease in the number of foreign students from Muslim states, a loss of foreign faculty teaching courses, and delays to scientific research projects.[261]

Apart from the noticeable bureaucratic changes, the regulations stipulated that "no more than the equivalent of one class or three credits per session, term, semester, or

[251] Paden, J. N., & Singer, P. W. (2003). America Slams the Door (On Its Foot): Washington's Destructive New Visa Policies. Retrieved April 15, 2018 from https://www.foreignaffairs.com/articles/united-states/2003-05-01/america-slams-door-its-foot-washingtons-destructive-new-visa. pp. 8-14.
[252] Potter, M., & Phillips, R. (2002). Six months after Sept. 11, hijackers' visa approval letters received. Retrieved from http://www.cnn.com/2002/US/03/12/inv.flight.school.visas/. Accessed April 20, 2018.
[253] Reeves 2005 op. cit. p.81
[254] Wong, K. C. (2006). Implementing the USA Patriot Act: A Case Study of the Student and Exchange Visitor Information Systems (SEVIS). BYU Educ. & LJ, 379.
[255] Rosser, V. J., Hermsen, J. M., Mamiseishvili, K., & Wood, M. S. (2007). A national study examining the impact of SEVIS on international student and scholar advisors. Higher Education, 54(4), 525-542.
[256] Danley, J. V. (2010). SEVIS: The impact of homeland security on American colleges and universities. New Directions for Institutional Research, 2010 (146), 63-73.
[257] Paden & Singer 2003 op. cit. p. 10
[258] NAFSA: Association of International Educators is a non-profit organization for professionals in the field of international education.
[259] Danley 2010 op. cit. p. 64
[260] Treyster, D. (2003). Foreign Students v. National Security: Will Denying Education Prevent Terrorism? New York Law School Journal of International and Comparative Law, volume 22, pp. 497-526.
[261] Paden & Singer 2003 op. cit. p. 10

trimester may be counted toward the full course of study requirement if the class is taken online or through distance education and does not require the student's physical attendance."[262] This is significant in that many international students greatly benefit from online coursework. Providing courses online for foreign students often means that materials can be made available in multiple languages more easily and efficiently than in the regular classroom setting, which facilitates improved learning conditions for the students.[263] This is a telling example of additional measures put in place to impede, not support, international students in the US.

According to a 2003 article in Foreign Affairs, about half of the students receiving PhDs in the science fields at US institutions at that time were foreigners. Prior to the September 11th attacks, public opinion was favorable towards international students and the various university programs that housed them, and the US media reflected as much.[264] While recognized as an important economic component to higher education, these students were also essential to cross-cultural knowledge exchange and understanding, as well as the strategic position of the United States in the world.[265] "International students and scholars studying in the United States contribute to a better understanding of, and regard for, the United States in other nations."[266] In that way, lessening the number of international students and "imposing extensive and expensive reporting requirements," would be to the detriment of the US university system and economy. Just as significantly, it undermined the "perception that American universities, the US economy, and American society openly welcome international visitors."[267] The United States had fallen out of favor on the world stage due to the way the federal government and the public reacted after the September 11th attacks, and that sentiment was echoed within higher education.[268]

The students themselves were also dissatisfied with the changes brought about by the implementation of SEVIS. In one study, international students criticized US visa procedures, reporting that strict and complex procedures "made it difficult to visit their home country during breaks out of fear that they would not be granted reentry to the United States."[269] Others were accepted to study in the United States at institutions of higher education, but were not granted visas to enter the country.[270] This demonstrates the complex relationship between how national governments choose to address diverse needs amid changing political climates, and those of universities and their international students.

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[262] U.S. Department of Justice Immigration and Naturalization Service. (2002). *2000 Yearbook of Immigration Statistics*. Washington, D.C.: U.S. Government Printing Office, pp. 4-274.

[263] Hartley, T., Nodenot, T., Omberton, L., and Sadkie, R. (2000). *Designing Multilingual, Multi-Disciplinary Distance Education*, In: Tom Bourner, Tim Katz, and David Watson (editors). New Directions in Professional Higher Education. Buckingham, U.K.: Society for Research into Higher Education and Open University Press, pp. 106-111.

[264] Reeves 2005 op. cit. p.165

[265] Paden & Singer 2003 op. cit. p. 9

[266] Jaeger, P., & Burnett, G. (2003). Curtailing online education in the name of homeland security: The USA PATRIOT Act, SEVIS, and international students in the United States. Retrieved from https://firstmonday.org/ojs/index.php/fm/article/view/1073/993.

[267] Paden & Singer 2003 op. cit. p. 13

[268] Martin, N. (2008) Foreign Students View U.S. Education as Superior. Retrieved from http://www.prweb.com/releases/2008/07/prweb1111954.htm. Accessed April 20, 2018.

[269] Lee, J. J., & Becskehazy, P. (2005). *Understanding international student attitudes about SEVIS and VISA procedures after 9/11*. Paper presented at the meeting of the American College Personnel Association, Nashville, TN.

[270] Lee, J. J. (2008). Beyond borders: International student pathways to the United States. *Journal of Studies in International Education*, *12*(3), 308-327.

Another dimension to this political shift involved economic implications. In order to set up SEVIS, it was estimated that schools had to "pay out $30,000 to $50,000 for software and hardware."[271] While the cost of implementing and operating SEVIS differed according to the type of school and program, it always meant added costs for the institution. This included the subsequent and continuous system maintenance that required staff support. As a result, it was possible that smaller schools where foreign students were not a chief source of income could decide just to opt out of international education entirely.[272] As it has became increasingly difficult for international students to study in the United States since the implementation of SEVIS,[273] US higher education "lost momentum" in attracting international students and scholars; the difficulties were proving to be too onerous in securing and maintaining educational visas.[274]

2.5.1.3 Student Migrants During the Trump Presidency

While SEVIS complicated legal procedures for international students in the US and initially affected enrollment, numbers had been on the uptick since 2006.[275] During the 2017-18 academic year, however, new international student enrollment in the US declined, and the "number of F-1 visas issued" began dropping considerably[276] What's more, many foresee a decline in the longstanding dominance of the US and the UK for international study due to political changes.[277] Many such changes are the product of Donald Trump's presidency.[278]

The 2016 election of Trump brought about "the most significant hardening of immigration policy in generations."[279] The attitudes, policies and chaos of his presidency, along with the general political climate across many Western countries, has ushered in "a fundamental period of change"[280] in the internationalization of higher education,[281] and with it, the status of student migrants.

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[271] Wong 2006 op. cit. p. 410
[272] Ibid. p. 411
[273] Martin 2008 op. cit. (no pagination)
[274] Danley 2010 op. cit. p. 67-68
[275] See International Student Enrollment Trends, 1948/49-2017/18 in the 2018 *Open Doors Report on International Educational Exchange*. [Institute of International Education. (2018b). International Student Enrollment Trends, 1948/49-2017/18. *Open Doors Report on International Educational Exchange*. Retrieved from https://www.iie.org/Research-and-Insights/Open-Doors/Data/International-Students/Enrollment. Accessed July 15, 2019.]
[276] F-1 visas issued were "644,000 in fiscal [year] 2015 to about 394,000 in fiscal [year] 2017, according to data from the U.S. State Department." [Leiber, N. (2019). Foreign Students Sour on America, Jeopardizing a $39 Billion Industry. Bloomberg. Retrieved from https://www.bloomberg.com/news/articles/2019-01-17/foreign-students-are-a-39-billion-industry-trump-is-scaring-them-off. Accessed July 2, 2019.]
[277] Altbach, P. G., & de Wit, H. (2017). Trump and the coming revolution in higher education internationalization. *International Higher Education*, (89), 3-5.
[278] The findings of a study (by Intead and FPP EDU Media, which are "two companies specializing in international student recruitment for colleges") discussed at a NAFSA: Association of International Educators meeting revealed that a Trump presidency would very much "dissuade international students from coming to the United States" since "60 percent of international prospective students would be less likely to attend a college in the United States if Mr. Trump were elected." [Najar, N. & S. Saul. (2016). 'Is It Safe?' Foreign Students Consider College in Donald Trump's U.S." The New York Times. Retrieved from https://www.nytimes.com/2016/11/17/us/is-it-safe-foreign-students-consider-college-in-donald-trumps-us.html. Accessed April 30, 2019.] Anti-immigrant campaign rhetoric resonated and continues to resonate with international students thinking about coming to the US to study.
[279] Thrush, G. (2017). Trump's New Travel Ban Blocks Migrants from Six Nations, Sparing Iraq. Retrieved from https://www.nytimes.com/2017/03/06/us/politics/travel-ban-muslim-trump.html. Accessed May 6, 2019.
[280] Altbach & de Wit 2017 op. cit. p.3

Similar to how the provisions of the Patriot Act negatively affected Muslims, one of the first things Trump did in office was to introduce a Muslim travel ban. Executive Order 13769 of January 27, 2017 entitled "Protecting the Nation From Foreign Terrorist Entry Into the United States" suspended entry into the US "aliens from countries referred to in section 217(a)(12) of the INA, 8 U.S.C. 1187(a)(12)" which are Iraq,[282] Syria, Iran, Sudan, Libya, Somalia and Yemen.[283] The ban "was subsequently blocked by the federal courts,"[284] but the Supreme Court eventually upheld a third iteration of it in 2018. As a result of the executive order, many international students were "pulled away from their studies,"[285] or put off travel in fear of reentry concerns. The possibility of having to "spend long continuous periods of time away from their families without the possibility of travelling home periodically,"[286] put undue stress on their situation and studies.

After initial confusion, it was clarified that the executive action did not include lawful permanent residents. "Although it 'reversed course' in regard to green card holders, the White House stood firm against the reentry of lawful visa holders—many of them students."[287] A particular example that made national headlines in January of 2017 was the case of a Sudanese graduate student at Stanford University "who was on a flight from Sudan to New York at the time President Donald Trump signed an immigration order" and was "briefly handcuffed and then detained at JFK airport for five hours before being released."[288] She was a Green Card holder.

Subsequently, in March of 2017, a memorandum was issued by the Executive Office of the President, which called for "heightened screening and vetting protocols and procedures for issuing visas" to ensure the strengthening of "the safety and security of our country."[289] This has led to "unexpected denials and long delays" which have "become increasingly common for international students and scholars seeking visas."[290] In a published letter to the US Secretary of State Michael Pompeo and the Acting Secretary of Homeland Security Kevin McAleenan, the President of Harvard University wrote, "Students report difficulties getting initial visas—from delays to denials. Scholars have

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[281] Another concern is that "the future of more than 200 international branch campuses, mainly sponsored by European and US universities, and located worldwide—many in Muslim-majority countries—might be in jeopardy." (Ibid. p. 4)

[282] "Trump signed a new executive order on March 6, 2017, reinstating the travel ban with some modifications (e.g., Iraq is no longer included on the list of banned countries)." [Rose-Redwood, C., & Rose-Redwood, R. (2017). Rethinking the politics of the international student experience in the age of Trump. *Journal of International Students*, *7*(3), I-IX.]

[283] Liptak, A. (2017). President Trump's Immigration Order, Annotated. The New York Times. Retrieved from https://www.nytimes.com/2017/01/28/us/politics/annotating-trump-immigration-refugee-order.html. Accessed July 1, 2019.

[284] Rose-Redwood & Rose-Redwood 2017 op. cit. p. I

[285] Ayoub, A., & Beydoun, K. (2016). Executive disorder: The Muslim Ban, emergency advocacy, and the fires next time. *Mich. J. Race & L.*, *22*. p. 224.

[286] Rose-Redwood & Rose-Redwood 2017 op. cit. p. III

[287] Ayoub & Beydoun 2016 op. cit. p.225

[288] Wong, Q. (2017). Sudanese student at Stanford detained, handcuffed at JFK airport. Retrieved from https://www.mercurynews.com/2017/01/28/stanford-university-student-detained-at-jfk-airport-for-five-hours-after-trumps-immigration-order/. Accessed July 1, 2019.

[289] Executive Office of the President. (2017). Memorandum 82 FR 16279. Document Number: 2017-06702. Publication Date: 04/03/2017.

[290] Hartocollis, A. (2019). International Students Face Hurdles Under Trump. The New York Times [online]. Retrieved from https://www.nytimes.com/2019/08/28/us/international-students-visa.html. Accessed February 28, 2020.

experienced postponements and disruptions for what have previously been routine immigration processes such as family visas, renewals of status, or clearance for international travel."[291] These instances most certainly put student migrants in the US in uncertain circumstances.

Another significant change in policy came by way of USCIS Memorandum on the "Accrual of Unlawful Presence and F, J, and M Nonimmigrants."[292] In an effort to "reduce the number of overstays and to improve how USCIS implements the unlawful presence ground of inadmissibility," adjustments were made regarding "how to calculate unlawful presence for F-1, J-1, and M-1 nonimmigrants, and their dependents." Prior to this, foreign nationals would only start accruing unlawful presence the day after an official determination was issued stipulating that the visa holder was indeed out of status. Now, however, the Department of Homeland Security can set "retroactive start dates for unlawful presence that begin the day after an individual's degree programme is complete or the day after a person's visa expires."[293] While the enforcement of this policy change is currently suspended as an injunction was issued in May of 2019 by the US District Court for the Middle District of North Carolina,[294] and a resolution pending, all of these measures have clearly affected student migrants in the US. The number of student visas issued has been decreasing annually since 2016.[295]

To conclude, at the core of the initial executive order was Trump's intent to fulfill his "hard-line campaign promise" of quelling the supposed "influx of terrorists and criminals."[296] John F. Kelly, the former Secretary of Homeland Security, made this clear when he stated, "unregulated, unvetted travel is not a universal privilege, especially when national security is at stake."[297] Ultimately, immigration is a subject matter that "touches upon sensitive chords of national sovereignty and is deeply politicised," especially in

[291] Bacow, L. S. (2019). Letter to Secretary Pompeo and Acting Secretary McAleenan. Published July 16 2019. Retrieved from https://www.harvard.edu/president/news/2019/letter-to-secretary-pompeo-and-acting-secretary-mcaleenan.

[292] USCIS. (2018a). Policy Memorandum on Accrual of Unlawful Presence and F, J, and M Nonimmigrants. PM-602-1060.1 Retrieved from https://www.uscis.gov/working-united-states/students-and-exchange-visitors/students-and-employment. Accessed January 12, 2019.

[293] The Economic Times. (2018). 65 US universities oppose Trump administration's visa policy changes for foreign students. Economic Times [online]. Retrieved from https://economictimes.indiatimes.com/nri/visa-and-immigration/65-us-universities-oppose-trump-administrations-visa-policy-changes-for-foreign-students/articleshow/67226880.cms Accessed 28 Feb. 2020.

[294] "On May 3, 2019, the U.S. District Court for the Middle District of North Carolina issued an injunction (PDF, 274 KB) regarding PM-602-1060 and PM-602-1060.1, policy memoranda titled, 'Accrual of Unlawful Presence and F, J, and M Nonimmigrants,' issued on May 10, 2018, and Aug. 9, 2018, respectively. Due to the nationwide preliminary injunction, USCIS is preliminarily enjoined from applying the policies in these policy memoranda to F, J, and M nonimmigrants. Until further notice, USCIS will apply the prior policy guidance in AFM Chapter 40.9.2, issued on May 6, 2009: Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(b)(i) and 212(a)(9)(c)(i)(I) of the Act (PDF, 3.33 MB)." [USCIS. (2018b). USCIS Issues Revised Final Guidance on Unlawful Presence for Students and Exchange Visitors. Retrieved March 1, 2020, from https://www.uscis.gov/news/uscis-issues-revised-final-guidance-unlawful-presence-students-and-exchange-visitors]

[295] US Department of State – Bureau of Consular Affairs (2019). Classes of Nonimmigrants Issued Visas (Including Border Crossing Cards): Fiscal Years 2015 – 2019. Report of the Visa Office 2019. Retrieved from https://travel.state.gov/content/dam/visas/Statistics/ AnnualReports/FY2019AnnualReport/FY19AnnualReport-TableXVI-A.pdf

[296] Thrush 2017 op. cit. (no pagination)

[297] Ibid. (no pagination)

regard to "the security dimension."[298] This motif is recurrent in the EU, and will be addressed in the following sections.

2.5.2 Regional Legislation in the Transatlantic Sector: The European Union

If the previous section's aim was to explain US immigration regulations for international students, this section will address regional legislation in the context of the EU. To this end, it expounds on both the internal and the international dimensions of EU migration policy as it relates to students.

The complex nature of EU migration policy requires an understanding of various key points. First, that "historical contingencies" and increasing migration and security concerns have spurred institutional changes over time, shaping the "evolution of cooperation among member states in the fields of freedom of movement and border management."[299] At the same time, inherent in EU immigration policy is the dichotomy of Member States trying to "protect their national interest" while tackling matters of shared transnational concern.[300] [301] In this context, this section will first provide a synopsis of the foundations of EU citizenship, discuss relevant issues related to competence, and give an overview of recent EU immigration policy developments. Later, the legal bases and relevant directives applicable to intra-EU as well as third-country national student migrants will be analyzed. Finally, challenges to immigration policy as it relates to students will be addressed, including a recent focus on regulating irregular migration to the EU, and the potential implications of "Brexit."

2.5.2.1 The Free Movement of Persons, EU Citizenship and Intra-EU Student Migration

In pinpointing the beginnings of European migration policy, a clear starting point would be the free movement of persons. The concept first emerged during the process of European integration, and remains "one of the fundamental objectives" of the Union.[302] Initial traces can be found in the 1957 Treaty that established the European Economic Community and included the free movement of workers as well as individuals in the form of "employees or service providers."[303] It was the Treaty of Maastricht,[304] however, that later brought about the concept of a common EU citizenship for nationals of every Member State.

Established by the Maastricht Treaty in 1992, the freedom of movement and residence for persons in the European Union is the linchpin of EU citizenship. It is this common

[298] Papagianni 2006 op. cit. p.322
[299] d'Appollonia, A. C. (2019). EU migration policy and border controls: from chaotic to cohesive differentiation. *Comparative European Politics*, *17*(2). p.194.
[300] Ibid. p. 195
[301] The Blue card is a good example in the area of labor migration.
[302] Papagianni 2006 op. cit. p.3
[303] European Parliament. (2018). Respect for fundamental rights in the European Union. Fact Sheets on the European Union. Retrieved from http://www.europarl.europa.eu/RegData/etudes/PERI/2017/600415/IPOL_PERI(2017)600415_EN.pdf. Accessed January 6, 2019.
[304] Signed on 7 February 1992 and entered into force 1 November 1993

citizenship from which the right of persons to move and reside freely within the territory of the Member States derives. The Lisbon Treaty[305] "confirmed this right."[306]

The legal basis for the freedom of movement and residence for persons in the EU is found in several normative instruments,[307] but the eventual elimination of internal borders through the Schengen Agreement[308] was complemented by Directive 2004/38/EC[309] on the right of EU citizens and their family members to "move and reside freely" within the EU. Under this Directive, Union citizenship is "the fundamental status of nationals of the Member States when they exercise their right of free movement and residence," which includes internationally mobile EU students studying within the EU.

In connection with the idea of citizenship, intra-European student mobility is part of a broader objective of promoting a unified European identity as one way of integrating the countries of Europe.[310] Student mobility inside Europe "tends to be for relatively short periods of time and is stimulated strongly by regional policy, made by the European Union" and while some do move outside the established programs, "the vast majority move under the auspices of the 'Erasmus' scheme."[311] Regional governance efforts in the context of international education such as the Bologna Process[312] aim to streamline academic mobility within the EU. It is important to remember, however, that "from a policy and juridical perspective, the Bologna Declaration should be seen as a general policy agenda," with outcomes directly correlated to national governments' efforts and impetus.[313] This brings up and directly correlates to matters of competence.

2.5.2.1.1 The "Competence Debate"

The existence of "tensions between the national and supranational level in the EU as regards [to] international cooperation on migration"[314] has consistently been a key issue. The question of competence is ever-present since "EU policy on… migration related issues has been traditionally characterised by an intense competence debate."[315] As

[305] Signed on 13 December 2007 and entered into force 1 December 2009

[306] Marzocchi, O. (2018). European Parliament: Fact Sheets on the European Union / Free movement of persons . Retrieved from http://www.europarl.europa.eu/factsheets/en/sheet/147/free-movement-of-persons. Accessed October 2, 2018.

[307] Article 3(2) of the Treaty on European Union (TEU); Article 21 of the Treaty on the Functioning of the European Union (TFEU); Titles IV and V TFEU; and Article 45 of the Charter of Fundamental Rights of the European Union. Ibid. 2018 (no pagination)

[308] The Agreement laid the groundwork for the creation of the Schengen Area, which has largely done away with internal border checks in Europe. It was signed on 14 June 1985 and came into effect 26 March 1995. The "Schengen Convention framework" set out in the Treaty of Amsterdam substantially amended the Treaty of Maastricht, and allowed for "the possibility of harmonizing national rules concerning such varied policy areas…[including] the rights of legal migrants"[308] at the EU-level. [Weinar, A. (2011). EU cooperation challenges in external migration policy. Robert Schuman Centre for Advanced Studies: European University Institute. p.1-15.]

[309] Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States

[310] Sigalas, E. (2010). Cross-border mobility and European identity: The effectiveness of intergroup contact during the ERASMUS year abroad. *European Union Politics*, *11*(2), 241-265.

[311] Brooks, R. & Waters, J. (2011) *Student Mobilities, Migration and the Internationalization of Higher Education.* Basingstoke, Palgrave Macmillan. p.69.

[312] See Chapter 2 section 2.3.2.1.1

[313] Huisman & Van der Wende 2004 op. cit. p. 353

[314] Weinar 2011 op. cit. p. 1

[315] Papagianni 2006 op. cit. p. 3

discussed, "territorial supremacy" in public international law allows for states to govern entry requirements for entering aliens. In the case of the EU Member States, however, this is complicated by supranational legislation, which "has restrained the power of the EU Member States in the fields where competences have been transferred to the European Union."[316] Principles that uphold relations within the EU relevant to this discussion are addressed in Title I of the Treaty on European Union (TEU) and include, among others, the principle of subsidiarity and the principle of respect for the national identity of Member States, since national identities must be respected by the Union. The legal foundation for the principle of subsidiarity is Article 5(3) of the TEU and Protocol (No 2) on the application of the principles of subsidiarity and proportionality, with the objective of "governing the exercise of the EU's competences" so as to "safeguard the ability of the Member States to take decisions and action," but also to "authorise interventions by the Union when the objectives of an action cannot be sufficiently achieved by the Member States, but can be better achieved at Union level."[317] This interplay creates a delicate tension in matters of migration.

Under European immigration policy,[318] the EU is "competent" to determine "the common conditions governing entry into and legal residence in a Member State," that include, for example, family reunification for third-country nationals. However, "Member States retain the right to determine volumes of admission for people coming from third countries to seek work."[319] The same may be applied to student migrants in that Member States determine incoming third-country national student flows. In this context, even though "transfrontier access to education and increased mobility of students in Europe is desirable with a view to enhancing the free movement of persons in the EU," it is crucial to remember that, "Member States are also eager to secure and protect their financial and educational interests."[320] This dynamic is critical to discussions surrounding both intra-EU student migrants as well as incoming third-country national student migrants to the EU.

2.5.2.2 Recent EU Immigration Policy Developments: Overview and Evolution

As discussed, issues relating to migration have been "perceived as a field where State sovereignty should not be surrendered" which has produced until recently "minimum harmonization."[321] However, the Treaty of Amsterdam[322] along with the Tampere Conclusions of 1999 "signalled a new era of migration policy," given the fact that "the legislative developments in the post-Amsterdam era to a certain degree constituted a… crystallisation of the Schengen and Maastricht *acquis*."[323] [324] In that line, one of the

[316] Eisele 2014 op. cit. p. 1
[317] Panizza, R. (2019). The principle of subsidiarity. European Parliament - Fact Sheets on the European Union. Retrieved from http://www.europarl.europa.eu/factsheets/en/sheet/7/the-principle-of-subsidiarity. Accessed July 10, 2019.
[318] The legal basis for which is found in Articles 79 and 80 of the Treaty on the Functioning of the European Union.
[319] Schmid-Drüner, M. (2019) European Parliament: Fact Sheets on the European Union / Immigration policy. Retrieved from http://www.europarl.europa.eu/factsheets/en/sheet/152/immigration-policy. Accessed June 2, 2019.
[320] Eisele 2014 op. cit. p. 424
[321] Weinar 2011 op. cit. p.2
[322] Signed on 2 October 1997, and entered into force on 1 May 1999
[323] The *acquis* of the EU is defined as "the body of common rights and obligations that are binding on all EU countries." [EUR-Lex Summaries of EU Legislation. (2019). Glossary of summaries: Acquis. Retrieved from https://eur-lex.europa.eu/summary/glossary/acquis.html. Accessed August 1, 2019.]

principal themes addressed by the EU Tampere summit was that of a common EU migration policy.

The European Council's Conclusions from the Tampere Summit "agreed to respect the principles of fair treatment of third country nationals."[325][326] Additionally, the conclusions recognized and highlighted "the making of the EU into an area of freedom, security, and justice as a top priority."[327] In 2000, a European Commission Communication presented a new model of addressing immigration that included a shared legal framework allowing for the admission of third-country nationals that would recognize similar rights and obligations to those of EU Member State citizens.[328] This policy was aimed at further closing the gap between the legal status of third-country nationals and that of EU citizens.

The mandate sent by the Tampere European Council to the European Commission delineated "Community action" in the realm of "legal migration for economic reasons" and outlined the "political aspects" of asylum and immigration.[329] Four areas were highlighted in which common immigration policy should be developed, including "fair treatment" for third-country nationals, aimed at guaranteeing equal rights on par with those of Member State citizens.[330] The idea that third-country nationals should be guaranteed rights comparable to citizens of EU Member States directly affects student migrants. However, given the ambitious directives of the Tampere Program (1999-2004) and the Commission's recognition of the need for appropriate channels for legal migration, the instruments adopted in this period were underwhelming. Minimum standards were established regarding the admission of students or researchers, which will be addressed in the following sections, but much was left up to the discretion of individual Member States concerning other areas of immigration such as family reunification.[331]

The Hague Programme of 2004 reconfirmed the foundations of a common legal framework put forth by the Tampere European Council conclusions of 1999. Through the Programme and the EU's agenda on "Freedom, Security, and Justice," the Commission published a policy plan on legal migration in response to labor market demands, and a European Pact on immigration and asylum was put forth. To better organize legal immigration, the Pact addressed the needs and reception capacity of each Member State.

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[324] Papagianni 2006 op. cit. p. 193

[325] "The legal status of third country nationals should be approximated to that of Member States' nationals."

[326] Weinar 2011 op. cit. p.2

[327] European Commission – Directorate General, Justice and Home Affairs. (2002). Tampere Kick-start to the EU's policy for justice and home affairs. Fact Sheet № 3.1. Retrieved from http://ec.europa.eu/councils/bx20040617/tampere_09_2002_en.pdf

[328] European Commission. (2000). Communication, Challenges for the European Information Society beyond 2005. COM(2000) 757 final. Brussels, 22.11.2000.

[329] Bertozzi, S. (2007). Legal migration: time for Europe to play its hand. *CEPS Working Document No. 257/February 2007*. pp. 1-18.

[330] European Parliament. (1999). Tampere European Council 15 and 16 October 1999 Presidency Conclusions. Retrieved from http://www.europarl.europa.eu/summits/tam_en.htm. Accessed May 1, 2018.

[331] Lirola Delgado, I., & Fernández Liste, Á. (2016). La inmigración legal en el marco de la Política Común de Inmigración de la Unión Europea: De un papel secundario a un protagonismo sobrevenido. *Revista Internacional de Estudios Migratorios (RIEM)*, *6*(1), 50-83. p.53-54.

Few of the proposed procedural changes were adopted, however, with the Blue Card[332] proving to be the most prominent of the implemented initiatives.

In 2008, the Commission adopted a Communication on "A Common immigration policy for Europe: principles, actions and tools" to safeguard the further expansion of the EU immigration policy outlined by the European Council in December of 2006.[333] Since the onset a Common Immigration Policy, however, EU Member States have furthered a restrictive vision of immigration, hesitant to admit immigrants and focused almost exclusively on security and control of its borders.[334] The ways in which regulating legal migration, including third-country national student migrants, has been of secondary importance to that of dealing with irregular migration (specifically the recent refugee crisis) will be addressed in later sections.

The Stockholm Programme sought to "improve coherence between policy areas," in the area of freedom, security and justice during the 2010-2014 period.[335] While the Programme did not refer to the development of a common labor immigration policy, it further emphasized equal rights between European citizens and third-country nationals, and a greater push towards integration.[336] As a result of "increasing importance given to the act of mobility in citizenship and immigration law," the extent of freedoms under European citizenship encompassed "certain categories of third-country nationals."[337] However, further development of the Stockholm Program was curtailed by the 2008 economic crisis and its consequences, including the rise of nationalist tendencies with clear anti-immigrant sentiments,[338] which will be further discussed in later sections.

Finally, recent policy developments include the Global Approach to Migration and Mobility (2011) and the European Agenda on Migration (2015). The former, adopted by the Commission in 2011 "establishes a general framework for the EU's relations with third countries in the field of migration... based on four pillars: regular immigration and mobility, irregular immigration and trafficking in human beings, international protection and asylum policy, and maximising the impact of migration and mobility on development."[339] Mobility of third-country nationals, including students, is cited as a key objective. Additionally, "catering [to] labour market needs in Europe" through offering "greater mobility for students and researchers from third countries" was indicated as an operational priority. The situation was highlighted as one that "could be further explored, taking into account Member State competence and measures to combat brain drain, e.g.

[332] The Blue Card is an EU work permit approved under Council Directive 2009/50/EC that allows for high-skilled non-EU citizens to work and live in any country within the European Union (excluding Denmark, Ireland and the UK). See Ch.2 Section 2.5.2.3.3.
[333] European Commission. (2008). A Common Immigration Policy for Europe. MEMO/08/402. Brussels, 17 June 2008.
[334] Lirola & Liste 2016 op. cit. p.56
[335] Council of the European Union. (2009). The Stockholm Programme – An open and secure Europe serving and protecting the citizens. Retrieved from https://ec.europa.eu/antitrafficking/sites/antitrafficking/files/the_stockholm_programme_-_an_open_and_secure_europe_en_1.pdf Accessed August 2, 2019.
[336] Koehler, J., Laczko, F., Aghazarm, C., & Schad, J. (2010). Migration and the economic crisis in the European Union: implications for policy. *Brussels: International Organization for Migration*. p. 27.
[337] Carrera, S., & Wiesbrock, A. (2010). Whose European citizenship in the Stockholm programme? The enactment of citizenship by third country nationals in the EU. *European Journal of Migration and Law*, *12*(3), 337-359.
[338] Lirola & Liste 2016 op. cit. p.54
[339] Schmid-Drüner 2019 op. cit. (no pagination)

through circular migration," but also through maximizing current mobility partnerships and pursuing additional opportunities. These steps are directly connected to the passage of the most recent Directive 2016/801 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing, which will be examined in the following sections.

2.5.2.3 The Regulation of Student Migrants within the Framework of the EU

Regular migration in the European Union "is regulated by either highly integrated EU policies" such as the Schengen regime, or, by "policies with non or very low EU integration," like individual Member States' admission procedures for third-country nationals.[340] The regulation of student migrants differs between EU citizens studying in other Member States and incoming third-country national student migrants, but both raise questions with regard to equal treatment, and limiting a student migrant's identity to only that of a student.

2.5.2.3.1 Intra-EU Student Migrants, Equal Treatment and the Right to Benefits

The first pertinent legislation for intra-EU student migration is *Council Directive 93/96/EEC of 29 October 1993 on the right of residence for students,* which restricted the right of residence "to the duration of the course of studies in question,"[341] and did not establish "any entitlement to the payment of maintenance grants by the host Member State on the part of students benefiting from the right of residence."[342] However, it did permit employment.[343]

The issue of entitlement to benefits has been of great importance due to the often "unclear conditions used by the [European Court of Justice] to decide who is and who is not entitled to noncontributory minimal benefits in the host State."[344] In the *Commission vs. Italy*[345] the ECJ dealt with "the difference between the financial provisions concerning students" and provisions for other types of residents.[346] Even if the "amount of the resources required" as established by the two Directives[347] is understood to be identical, Member States are not required "to fix the same amounts in both cases." Meaning, students are not necessarily entitled to the same benefits as other types of residents, such

[340] d'Appollonia, 2019 op. cit. p.194
[341] Article 2
[342] Article 3
[343] Article 2 of Directive 93/96/EEC stipulates "2. Articles 2, 3 and 9 of Directive 68/360/EEC shall apply mutatis mutandis to the beneficiaries of this Directive." Referring then to Article 2 of Directive 68/360/EEC, it outlines that "1. Member States shall grant the nationals referred to in Article 1 the right to leave their territory **in order to take up activities as employed persons and to pursue such activities** in the territory of another Member State. Such right shall be exercised simply on production of a valid identity card or passport. Members of the family shall enjoy the same right as the national on whom they are dependent."
[344] Verschueren, H. (2011). EU Free Movement of Persons and Member States' Solidarity Systems: Searching for a Balance. In *The first decade of EU migration and asylum law*. Guild, E., & Minderhoud, P. (Eds.). Martinus Nijhoff Publishers. p. 47–74.
[345] Case C-424/98 [2000] ECR I-4001
[346] Barnard, C. (2019). *The substantive law of the EU*. Oxford University Press, USA. p.339.
[347] Directive 90/364 on the right of residence and Directive 90/365 on the right of residence for employees and self-employed persons who have ceased their occupational activity

as retired persons. Member States have "latitude in the matter," as it is understood that a "student's stay in the host state [is] only temporary (since it [is] limited to the duration of the studies)" while in the case of other persons, it is "potentially indefinite."[348] The Court cited Article 1 of Directive 93/96 as evidence that students are able to work to bolster their income, as opposed to, for example, retired persons. The Court also made clear they must "avoid becoming a burden on the social assistance system of the host Member State during their stay."

Subsequently, in the case of *Bidar*,[349] a French national lived with family members in the United Kingdom and completed his secondary education there before starting university in London. "While Mr. Bidar received assistance with respect to tuition fees, his application for financial assistance to cover his maintenance costs, in the form of a student loan, was refused on the ground that he was not settled in the United Kingdom." As such, the national court determined he was not entitled to a student loan under Directive 93/96.

The ECJ found, however, that if "equal treatment as regards to benefits granted to members of workers' families contributes to their integration in the society of the host country, in accordance with the aims of the freedom of movement of workers," it would thus seem "artificial to exclude the same benefit from the scope of the Treaty for other categories of persons who are now also covered," i.e., students. However, "Member States are entitled to ensure that there is a real link between the student and the Member State... or that there is a sufficient degree of integration in society." Meaning, it is necessary to establish the extent of "affinity" the applicant maintains with the "educational system" as well as "the degree of his integration into society." While the Court alluded to the fact that students should be afforded the same benefits as say, workers, this last provision supports a continued individualism among Member States in that each state is free to establish its own ground rules with regard to determining a students' level of integration in the host State society.

More recently, Directive 93/96/EEC was repealed and replaced by *Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States*.[350] Article 7 lays out the right to residence, with certain updates. Students must demonstrate that they have "comprehensive sickness insurance" and that they possess "sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence."[351] Additionally, for "periods of residence longer than three months"

[348] Barnard 2019 op. cit. p.339
[349] Case C-209/03 Bidar [2005] ECR I-2119
[350] The "latest consolidated version" of this act: 16/06/2011
[351] Article 7 states "1. All Union citizens shall have the right of residence on the territory of another Member State for a period of longer than three months if they:
(c) — are enrolled at a private or public establishment, accredited or financed by the host Member State on the basis of its legislation or administrative practice, for the principal purpose of following a course of study, including vocational training; and
— have comprehensive sickness insurance cover in the host Member State and assure the relevant national authority, by means of a declaration or by such equivalent means as they may choose, that they have sufficient resources for

they have to meet particular requirements that include "a valid identity card or passport, provide proof of enrolment at an accredited establishment and of comprehensive sickness insurance cover and the declaration or equivalent means." However, it is left up to the Member State to determine the "specific amount of resources" referred to, which is vague.[352] While there is more specificity in particular areas (i.e. demonstrating that you meet certain requirements for stay, length of time to establish residence, etc.) there is still a wide margin for interpretation among the different Member States for others.

The issue of equal treatment is also addressed. Article 24 stipulates that "all Union citizens residing on the basis of this Directive in the territory of the host Member State shall enjoy equal treatment with the nationals of that Member State." However, it goes on to say that host Member States are "not be obliged to confer entitlement to social assistance during the first three months of residence or, where appropriate, the longer period provided for," and are not required, "prior to acquisition of the right of permanent residence, to grant maintenance aid for studies… consisting in student grants or student loans to persons other than workers, self-employed persons, persons who retain such status and members of their families."[353] This means that students who possess permanent residence, as well as workers, self-employed persons, or persons with such status, may in fact lay claim to study grants. However, residence means more than three months in the host State, and is subject to the individual application procedures of such. If one takes into account the fact that "the vast majority [of intra-EU student migrants] move under the auspices of the 'Erasmus' scheme,"[354] it is quite possible that many are not spending more than a semester in another Member State. Meaning they are short-term migrants that would not become residents, and would thus not be entitled to grants.

Also relevant is Chapter VI, which discusses restrictions on the right of entry and the right of residence on grounds of public policy, public security or public health. Article 27 maintains that Member States "may restrict the freedom of movement and residence of Union citizens and their family members, irrespective of nationality, on grounds of public policy, public security or public health." However, this "shall not be invoked to serve

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themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence."

[352] Article 8 states "3. For the registration certificate [of periods of residence longer than three months] to be issued, Member States may only require that

— Union citizens to whom point (c) of Article 7(1) applies present a valid identity card or passport, provide proof of enrolment at an accredited establishment and of comprehensive sickness insurance cover and the declaration or equivalent means referred to in point (c) of Article 7(1). Member States may not require this declaration to refer to any specific amount of resources."

[353] Article 24 states "1. Subject to such specific provisions as are expressly provided for in the Treaty and secondary law, all Union citizens residing on the basis of this Directive in the territory of the host Member State shall enjoy equal treatment with the nationals of that Member State within the scope of the Treaty. The benefit of this right shall be extended to family members who are not nationals of a Member State and who have the right of residence or permanent residence.

2. By way of derogation from paragraph 1, the host Member State shall not be obliged to confer entitlement to social assistance during the first three months of residence or, where appropriate, the longer period provided for in Article 14(4)(b), nor shall it be obliged, prior to acquisition of the right of permanent residence, to grant maintenance aid for studies, including vocational training, consisting in student grants or student loans to persons other than workers, self-employed persons, persons who retain such status and members of their families."

[354] Brooks & Waters 2011 op. cit. p.69

economic ends."[355] This last caveat is important, but difficult to prove whether or not it is being violated.

Ultimately, by setting requirements that are "subject to interpretation and discussion" to a certain degree provokes "case-by-case decisions on applications for basic social benefits and to a very individualistic approach of (national) solidarity."[356] As a result, even though initiatives such as the Bologna Process have helped to unify certain aspects of intra-EU student migration (streamlining academic mobility through such measures as the creation of qualification comparability and easier credit transferring) a lack of convergence with regard to other important practical matters creates inequities. Even though Member States cannot restrict the freedom of movement and residence of Union citizens "to serve economic ends," depending on Member States' financial and educational interests, policies can be favorable or unfavorable to intra-EU student migrants (for example, in the realm of entitlement to benefits or study grants). This creates disparities between EU citizens and potentially influences where students choose to study.

2.5.2.3.2 The Regulation of Third-Country National Student Migrants

While intra-EU student migrants are governed by certain regulations, third-country national student migrants are regulated by others. This analysis begins with *Council Resolution of 30 November 1994 on the admission of third-country nationals to the territory of the Member States for study purposes*.[357] The Resolution applies exclusively to higher education, limits length of stay solely to the course period and does not permit employment (with certain exceptions).

Under the general criteria of the Resolution, a student is deemed "a national of a third country admitted…in order to take up a course of study, study for a doctorate, or pursue academic activity following a course of higher education," and that "the earning of income is not the principal aim." Requirements for admission include the fulfillment of entry requirements, the offer of admission to study, and proof that the applicant "has the financial means required to support the cost of his/her studies" so as to not "claim social assistance" in the Member State; also, health coverage (if required by national legislation). Furthermore, "a Member State may also require the student to satisfy the immigration authorities that he/she would return to his/her own country on completion of studies." This is a crucial motif that segues to several important points in this Resolution.

First, under general considerations, while the Council "confirms that the international exchange of students and academics is desirable" especially in regard to the "positive implications for relations between the Member States and the States of origin," it stands firm that students should return to their home country so that what they have learned will be of use to their country of origin. The Council expressly states that the admission of third-country nationals to study "should not turn into permanent immigration," and Member States must work to "prevent those who are mainly seeking employment from

[355] Article 27 states "1. Subject to the provisions of this Chapter, Member States may restrict the freedom of movement and residence of Union citizens and their family members, irrespective of nationality, on grounds of public policy, public security or public health. These grounds shall not be invoked to serve economic ends."
[356] Verschueren 2011 op. cit. p.71
[357] OJ C 274, 19.9.1996, p. 10–12 (in force)

receiving authorization to stay on as students. This clearly separates student migrants from other possible facets of their identity, for example, as potential workers. Alternatively, third-country nationals "admitted for the purposes of family reunification" are in fact "exempt from the scope of this resolution." Most interestingly, the Resolution does not pertain to third-country nationals "who are already covered or who may, in the future, be covered by bilateral agreements between the Member States regarding the cooperation between institutions of higher education." Meaning, these rules many not even apply to many student migrants who travel within the framework of bilateral agreements.

The idea that international study should not turn into permanent immigration is reiterated in the section addressing authorization to reside: "the duration of residence is limited to the length of the course." However, "if the period of study is longer than one year…it can be renewed on a yearly basis" but will "depend on the student's ability to prove that he/she fulfils the requirements," such as having passed all examinations. Finally, employment authorization is not permitted unless Member States allow for "short-term or subsidiary jobs" that do not interfere with one's studies, or "represent an income vital for the subsistence of the student."

The next seminal legislation[358] was *Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service*.[359] Directive 2004/114/EC established as one of its objectives the promotion of "Europe as a whole as a world centre of excellence for studies" which meant the promotion of incoming third-country national mobility and the "approximation of the Member States' national legislation on conditions of entry and residence" to achieve this.[360]

Prior to the passage of the 2004 Directive, the proposal put forth by the European Commission in 2002 received key amendments from the European Parliament, the most significant of which was an emphasis on the "obligation of the Member States to ensure that third-country nationals are admitted for the purpose of study under the same

[358] Prior to this, however, it is worth mentioning that while *Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents* does not apply to third-country nationals who are pursuing studies, once granted "long-term resident" status by one Member State, the third-country national has the right to reside in a second Member State in pursuit of studies.
Article 3 outlines the scope of the Directive and establishes that it "does not apply to third-country nationals who: (a) reside in order to pursue studies or vocational training."
Article 14 states that "1. A long-term resident shall acquire the right to reside in the territory of Member States other than the one which granted him/her the long-term residence status, for a period exceeding three months, provided that the conditions set out in this chapter are met. 2. A long-term resident may reside in a second Member State on the following grounds: (a) exercise of an economic activity in an employed or self-employed capacity; (b) pursuit of studies or vocational training."

[359] This Directive on the admission of students was not among the first legal instruments tendered by the Commission for adoption under Article 63 EC, which addressed measures on asylum, refugee state, and immigration policy. This is "surprising" since student migration is thought of as less "risky" and more "promising" by way of potential long-term societal benefits. [Wiesbrock, A. (2010). *Legal migration to the European Union*. Brill. p.275.]

[360] "One of the objectives of Community action in the field of education is to promote Europe as a whole as a world centre of excellence for studies and vocational training. Promoting the mobility of third-country nationals to the Community for studies is a key factor in that strategy. The approximation of the Member States' national legislation on conditions of entry and residence is part of this."

conditions as European students."[361] The objective was to facilitate third-country national student mobility by "harmonizing" entry and residence conditions across Member States.

The Directive initially establishes several understandings as a basis for its content. First, it considers the types of migration addressed in the Directive to be temporary (and with the aim of intercultural exchange),[362] but that third-country nationals **should** be allowed labor market access to cover "part of the cost of their studies."[363] This deviates from previous legislation. Still, it reiterates that admission can be refused if the individual concerned is a threat to public policy or security,[364] and, if its objectives cannot be achieved by the Member States but can be better achieved at the EU level, the Union may adopt measures (in accordance with the principle of subsidiarity).[365]

Under this Directive, "student" signifies "a third-country national accepted by an establishment of higher education and admitted to the territory of a Member State to pursue as his/her main activity a full-time course of study."[366] Asylum-seekers, those who are family members of Union citizens, long-term residents, and workers are **excluded** from the scope of the Directive.[367] This harkens back to the idea that students are often separated from their other identities, often for the purposes of classifying migrants when regulating immigration.

The general requirements for all four titular categories addressed are: a valid travel document, parental authorization (for minors), sickness insurance, to not be regarded "as a threat to public policy, public security or public health," and proof that the application fee is paid.[368] Candidates were also required to provide "documentary evidence" regarding the specific conditions of their category. The conditions for students are as follows: to be accepted by an institution of higher education for a course of study, and to provide the evidence of (1) "sufficient resources" to cover costs (as established by the Member State),

[361] Wiesbrock 2010 op. cit. p.276

[362] "(7) Migration for the purposes set out in this Directive, which is by definition temporary and does not depend on the labour-market situation in the host country, constitutes a form of mutual enrichment for the migrants concerned, their country of origin and the host Member State and helps to promote better familiarity among cultures."

[363] "(18) In order to allow students who are third-country nationals to cover part of the cost of their studies, they should be given access to the labour market under the conditions set out in this Directive. The principle of access for students to the labour market under the conditions set out in this Directive should be a general rule; however, in exceptional circumstances Member States should be able to take into account the situation of their national labour markets."

[364] "(14) Admission for the purposes set out in this Directive may be refused on duly justified grounds. In particular, admission could be refused if a Member State considers, based on an assessment of the facts, that the third-country national concerned is a potential threat to public policy or public security."

[365] "(24) Since the objective of this Directive, namely to determine the conditions of admission of third-country nationals for the purposes of study, pupil exchange, unremunerated training or voluntary service, cannot be sufficiently achieved by the Member States and can, by reason of its scale or effects, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective."

[366] Article 2 (b) states "Definitions For the purposes of this Directive: (a) 'third-country national' means any person who is not a citizen of the European Union within the meaning of Article 17(1) of the Treaty; (b) 'student' means a third-country national accepted by an establishment of higher education and admitted to the territory of a Member State to pursue as his/her main activity a full-time course of study leading to a higher education qualification recognised by the Member State, including diplomas, certificates or doctoral degrees in an establishment of higher education, which may cover a preparatory course prior to such education according to its national legislation."

[367] Article 3

[368] Article 6

(2) "sufficient knowledge of the language of the course" (if the Member State requires), and that (3) "the fees charged by the institution [have been] paid" (if the Member State requires). However, students seem not to have to provide proof of sickness insurance since it is generally covered by enrollment.[369] Of note is that the majority of the conditions for entry is left up to individual Member States' requirements and procedures.

This is carried over into Chapter IV of the Directive, which deals with economic activities by students. It establishes that students are entitled to be employed "subject to the rules and conditions" and the "situation of the labour market" in the host Member State. The Member State will also set the maximum number of hours, but the minimum should not be less than 10 hours per week,[370] with access to economic activities possibly restricted during the first year of residence. While this shows advances in the rights of third-country migrant students by allowing for employment, it still demonstrates the degree to which the conditions among individual Member States can vary, since procedures are established nationally.

Finally, in line with previous legislation, residence permits issued to students are for "a period of at least one year" and are renewable, but can be "withdrawn if the holder: (a) does not respect the limits imposed on access to economic activities."[371] Also, the Directive should not interfere with other bilateral or multilateral agreements.[372]

Most recently, Directive 2004/114/EC was repealed and replaced by *Directive 2016/801 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing*. Prior to the passage of Directive 2016/801, a 2013 press release from the Commission entitled "Making the EU more attractive for foreign students and researchers" committed to modifying and updating the current Directives on students and researchers. One of the goals outlined was to provide better "access to the labour market." It proposed that "during their studies, students will be allowed to work for a minimum of 20 hours per week so that they can support themselves adequately and contribute economically." Additionally, students and researchers would be able to stay up to 12 months after completing their studies to search for a job or start a business, albeit with certain conditions. However, the Commission conceded that this would not translate into "an automatic right to work, as granting a work permit remains a national responsibility."[373] Additional objectives included making application processes "more straightforward and transparent."[374]

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[369] Article 7 states, "2. Students who automatically qualify for sickness insurance in respect of all risks normally covered for the nationals of the Member State concerned as a result of enrolment at an establishment shall be presumed to meet the condition of Article 6(1)(c)."

[370] Article 17 states "2. Each Member State shall determine the maximum number of hours per week or days or months per year allowed for such an activity, which shall not be less than 10 hours per week, or the equivalent in days or months per year."

[371] Article 12

[372] Article 4

[373] European Commission. (2013). Press release: Making the EU more attractive for foreign students and researchers (IP/13/275).

[374] Another key aim was to offer "simpler and more flexible rules" for intra-EU mobility and transfer of skills and knowledge.

The forming of a "common legal framework for the admission of non-EU students and researchers" was "a priority"[375] in part achieved through Directive 2004/114/EC (students) and Directive 2005/71/EC (for researchers). To this aim, the purpose of Directive 2016/801 was to create a single instrument that streamlines the entry and residence conditions for student migrants, as well as for researchers. It sought to consolidate and "further harmonise the different national legislative frameworks on these issues," demonstrating "the importance that the EU ascribes to student mobility" through "continuous supranational effort."[376] The idea was that the Directive would make it easier to retain talent in the EU, allowing for third-country nationals to acquire skills and knowledge during a period of training in Europe and later contribute to the creation of a pool of skilled workers.[377] Students and researchers were also permitted a nine-month period of stay in the EU after graduation or completion of research to look for employment or start a business.[378]

Another relevant change relates to economic activities by students. The Member States will still set the maximum number of hours, but the minimum should not be less than 15 hours per week,[379] (not the 20 hours that had been proposed), a change from the previous legislation which stipulated 10 hours. Additionally, the condition that access to economic activities could be restricted during the first year of residence was lifted. Again, this demonstrates advances in the rights of third-country migrant students by allowing for employment, but the degree to which the conditions among individual Member States can vary remains problematic, since procedures are established nationally.

Beyond the previous noteworthy updates, there are several additional intriguing points. A first point of interest is found in Article 6, which addresses the idea of volumes of admission. It states the Directive should **not** "affect the right of a Member State to determine, in accordance with Article 79(5) TFEU, the volumes of admission of third-country nationals referred to in Article 2(1) of this Directive, **with the exception of students,** if the Member State concerned considers that they are or will be in an employment relationship. On that basis, an application for authorisation may either be considered inadmissible or be rejected." Meaning, the Member State can limit the number of entrants for the other categories of the Directive (researchers, individuals pursuing training or voluntary service, those involved in a pupil exchange scheme or educational project, as well as au pairs), but students are exempted—unless the Member State concerned considers the student is in an employment relationship. While ambiguous, it seems that this Article is safeguarding Member States' rights against third-country nationals intent on using a student visa to the achieve the eventual goal of finding employment.

[375] Levatino, A., Eremenko, T., Molinero Gerbeau, Y., Consterdine, E., Kabbanji, L., Gonzalez-Ferrer, A., ... & Beauchemin, C. (2018). Opening or closing borders to international students? Convergent and divergent dynamics in France, Spain and the UK. Globalisation, Societies and Education, 16(3), p.368.
[376] Ibid. p.368
[377] Lirola & Liste 2016 op. cit. p.57
[378] Article 25
[379] Article 24

A second significant item is found in Article 22, which addresses equal treatment. It states "3. ...Students shall be entitled to equal treatment with nationals of the Member State concerned as provided for in Article 12(1) and (4) of Directive 2011/98/EU subject to the restrictions provided for in paragraph 2 of that Article." In Directive 2011/98/EU, Article 12(1) on the right to equal treatment establishes "1. Third-country **workers** as referred to in points (b) and (c) of Article 3(1) shall enjoy equal treatment with nationals of the Member State where they reside with regard to: (c) **education and vocational training**;" However, in paragraph 2, it states: 2. **Member States may restrict equal treatment**: (a) under point (c) of paragraph 1 by: (ii) **excluding those third-country workers who have been admitted to their territory in conformity with Directive 2004/114/EC**; (iii) **excluding study and maintenance grants and loans or other grants and loans**; (iv) **laying down specific prerequisites including language proficiency and the payment of tuition fees, in accordance with national law, with respect to access to university and post-secondary education** and to vocational training which is not directly linked to the specific employment activity." Meaning, student migrants who work ("third-country workers who have been admitted to their territory in conformity with Directive 2004/114/EC") are excluded from equal treatment. This is problematic in that if a student migrant is also a worker, simply by being admitted as a student they are excluded from certain advantages. In contrast, if a third-country national enters the EU as a worker, but later decides to study, they "shall enjoy equal treatment" with EU citizens.

Finally, in the spirit of comprehensiveness and consolidation, Chapter VI of the Directive addresses mobility between Member States, which includes intra-EU mobility (Article 27), short-term mobility of researchers (Article 28), long-term mobility of researchers (Article 29), mobility of researchers' family members (Article 30), and mobility of students (Article 31).[380] The mere fact that the wide range of differing types of academic mobility is addressed is of interest: it speaks to an aim in addressing all together the various types and aspects of movement for study purposes.

Although there have been advances through Directive 2016/801, it also "reveals the extent to which the various member states regulate non-EU-student migration differently."[381] While supranational progress has been made, there is still a lack of harmonization between Member States regarding third-country national student migrants.

[380] The requirements for mobility within the EU of third-country national students is similar to that of entering the EU. Article 31 states, "6. The second Member State may require the notification to include the transmission of the following documents and information:
(a) evidence that the student carries out part of the studies in the second Member State in the framework of a Union or multilateral programme that comprises mobility measures or of an agreement between two or more higher education institutions and evidence that the student has been accepted by a higher education institution in the second Member State;
(b) where not specified under point (a), the planned duration and dates of the mobility;
(c) evidence that the student has sickness insurance for all the risks normally covered for nationals of the Member State concerned as provided for in point (c) of Article 7(1);
(d) evidence that during the stay the student will have sufficient resources to cover subsistence costs without having recourse to the Member State's social assistance system as provided for in point (e) of Article 7(1), study costs, as well as the travel costs to the first Member State in the cases referred to in point (b) of Article 32(4);
(e) evidence that the fees charged by the higher education institution have been paid, where applicable. The second Member State may require the notifier to provide, before the start of mobility, the address of the student concerned in the territory of the second Member State."
[381] Levatino et al. 2018 op. cit. p.368

2.5.2.3.3 The Blue Card

The matter of residence possibilities for third-country nationals is also relevant. As discussed, the Blue Card is an EU work permit approved under Council Directive 2009/50/EC that allows for high-skilled non-EU citizens to work and live in any country within the European Union (excluding Denmark, Ireland and the UK). Different categories of migrants can apply for the Blue Card including highly qualified or skilled workers, researchers, or students.[382] Third-country national students working towards a higher education degree are also eligible for a permanent residency permit, or the Blue Card, after one year of studying in an EU Member State. Regulations vary among Member States,[383] but the underlying factors are similar throughout.[384]

However, the Blue Card application is directly linked to work, even for students. In the case of students, EU Member States must permit between 10-20 hours of work per week in addition to study. Moreover, to apply for the Blue Card, aside from meeting other requirements to study in the EU,[385] applicants must also provide:

- A work contract of at least one year in the hosting state;
- Proof that your salary exceeds the average in the hosting state by 1.5 times or 1.2 times for professions in shortage; and
- A written declaration by your employer.[386]

In previous legislation we have seen a consistent separation of student migrants from their identity as workers. However, to access permanent residence (i.e. the Blue Card) they must be both students and workers. This deviates from previous regulatory tendencies.

2.5.2.3.4 The Principle of Non-Discrimination

As was previously discussed, even though Member States have been somewhat unwilling to relinquish control over their jurisdiction in immigration matters (sometimes going against certain key principles of the Union), the European Court of Justice has often provided a counterbalancing force. In the case of student migrants, the ability and authority of Member States to further individual financial and educational interests has "gradually been curtailed by the Court's case law that has generally been

[382] There are also options for vocational trainees, seasonal workers, and intra-Corporate Transfers

[383] Apart from the distinction between internal EU mobility and external migration, there continues to be diversity in Member States' policies for particular migration types, such as skilled migration. Cerna argues the "transposition" of the Blue Card Directive varied widely between Member States with some using it as "a complement to their national high-skilled immigration policies (e.g. Czech Republic and France)" while others used it as a "scheme to attract high-skilled workers (such as in Hungary, Slovakia and Spain)." [Cerna, L. (2013). Understanding the diversity of EU migration policy in practice: the implementation of the Blue Card initiative. *Policy Studies*, *34*(2), 180-200.] Still other Member States chose to not participate in the Directive at all, deciding instead to continue with their own national high-skilled immigration policies (Denmark, Ireland and the UK). This scenario harkens back to the core issues of EU migration policy: the interaction between Member State policy and EU-wide policy, and the wariness of Member States to give up certain degrees of sovereignty.

[384] In Germany, for example, students can stay for an additional 18 months after completion to look for work, and are permitted to work during that period to support themselves. [EU Blue Card. (2015). Who can apply for the EU blue card? Retrieved from https://www.eu-bluecard.com/students/. Accessed August 2, 2019.]

[385] A valid travel document, evidence that you are not a threat to public policy, security or health, proof of paid application fee and health insurance.

[386] EU Blue Card 2015 op. cit.

favourable to students."[387] The ECJ's treatment of the principle of non-discrimination is a prime example.

This principle is consolidated in Part Two of the Treaty on the Functioning of the European Union (Article 18) and protects against nationality-based discrimination.[388] That said, the idea that student migrants "must have access to higher education on the same terms as nationals and to be charged the same fees has started to pose significant problems for states," since, "in some systems every incoming migrant EU student will take a place which might have been occupied by a domestic student."[389] Accordingly, many states have tried to protect the domestic student population in light of this tendency, but the Court has repeatedly found otherwise.

In *Gravier*,[390] the Court contends that "the imposition of a registration fee for vocational training asked from a French student who wanted to study in Belgium, where the same fee was not imposed on Belgian students, constituted a discrimination on grounds of nationality contrary to Article 18 TFEU."[391] Similar concerns were addressed in *Commission v. Austria* (2005).[392] Access to higher education in Austria is more lenient than in other Member States and accordingly it argued that "the national provision is justified" as it "safeguards the homogeneity of the Austrian education system and, in particular, the policy aim of unrestricted public access to higher education in Austria." Meaning, if Austrian higher education were to allow open access it could be inundated with students from other Member States, which would cause logistical problems for institutions. The Court found "little evidence that this was in fact a problem" but even so, the Court contended that "excessive demand for access to specific courses could be met by the adoption of specific non-discriminatory measures such as the establishment of an entry examination or the requirement of a minimum grade."[393] This harkens back to the idea that the right to higher education should be accessible to all, but with the proviso of merit or capacity.

Concerns also extend to study grants, including for certain third-country nationals.[394] In *Gürol*[395] the Court found "that the child of a Turkish worker who was enrolled at a higher education institution as a student fell under the scope of [Article 9], although she was not living with her parents anymore," and thus could seek equal treatment with regard

[387] Eisele 2014 op. cit. p. 424
[388] Article 18 stipulates that "…any discrimination on grounds of nationality shall be prohibited."
[389] Barnard 2019 op. cit. p. 260
[390] Case C-293/83 Gravier [1985] ECR 593
[391] Eisele 2014 op. cit. p. 193
[392] C-147/03
[393] Barnard 2019 op. cit. p. 260
[394] Albeit with the understanding that Turkish nationals enjoy a unique relationship with EU Member States due to the Turkey Association Agreement. It should be noted that while the EU has entered into certain agreements with a range of OECD countries that include Iceland, Norway, Switzerland, and Turkey, "no comparable international agreements containing migration-related provisions" were concluded with other OECD countries, such as the United States. (Eisele 2014 op. cit. p. 190) Such states do however "benefit from favourable rules concerning entry and residence either based on the EU visa policy or based on bilateral regulation." (Ibid. p.190) If international students, coming from countries outside the EU, such as US citizens, are afforded the same rights as EU citizens, there may be increased incentive to study in Europe.
[395] Case C-374/03 Gürol [2005] ECR I-6199

to study grants.[396] While this case is unique in that Turkish nationals enjoy privileges closer to that of EU citizens due to the Association Agreement, it brings up the questions as to whether or not third-country nationals do in fact enjoy the same rights as EU citizens in practice. If the ability to study is inherently linked to the capacity to cover costs, it would be counterintuitive to allow admission to a higher education program of study without the possibility of being able to afford it. That said, one of the requisites of third-country nationals for entry to study is that the "fees charged by the higher education institution have been paid," which implies demonstrating capacity to cover costs—something that is not required of intra-EU student migrants.

2.5.2.3.5 The Student Migrant: Identity Matters

Even though the principle of non-discrimination protects intra-EU student migrants, all student migrants face problems related to a division of identities. This idea, revisited throughout this analysis, is knotty. As previously stated, the recurrent tendency of identifying student migrants solely as students divorces them from the other facets of their identity, and detaches them from additional functions. In this context, an important question has been "whether students who work are to be considered 'workers.'"[397] The provisions of Directive 2004/114, for example, did not apply to "third-country nationals considered under the national legislation of the Member State concerned as workers or self-employed persons." However, it did allow for third-country national students to be "given access to the labour market under the conditions set out in this Directive" in an effort to "cover part of the cost of their studies."[398] This creates confusion and leaves open a wide margin for interpretation on the part of Member States.

Contrastingly, under the EC-Turkey Association Council Decision 1/80,[399] students are in fact understood to be workers and "are therefore entitled to a renewal of their work permit to work for the same employer after one year of employment, and ultimately entitled to even wider workforce access."[400] In *Kurz*,[401] for example, "a Turkish national who was authorised to accept an apprenticeship training position in Germany and who worked during the course of his training… had to be considered as a worker within the scope of Article 6(1)."[402] [403] Subsequently, in *Payir*,[404] the Court held that "a Turkish national who entered the United Kingdom as a student, with permission to work, subject

[396] Eisele 2014 op. cit. p. 310
[397] Peers, S. (2008). EU Migration Law and Association Agreements. In *Justice, liberty, security: New challenges for EU external relations* (Vol. 11). Martenczuk, B., & Van Thiel, S. (Eds.). p.83.
[398] "(18) In order to allow students who are third-country nationals to cover part of the cost of their studies, they should be given access to the labour market under the conditions set out in this Directive. The principle of access for students to the labour market under the conditions set out in this Directive should be a general rule; however, in exceptional circumstances Member States should be able to take into account the situation of their national labour markets." Additionally, "(19) The notion of prior authorisation includes the granting of work permits to students who wish to exercise an economic activity."
[399] Decision No 1/80 of the Association Council of 19 September 1980 on the Development of the Association, having regard to the Turkey Association Agreement (generally referred to as the Ankara Agreement) that "provides for the eventual extension of the free movement of workers, services and establishment" between Turkey and the EU. (Peers 2008 op. cit. p.54)
[400] Peers 2008 op. cit. p.83
[401] Case C-188/00 Kurz [2000] ECR I-10691
[402] Article 6(1) of Decision No 1/80 of the Association Council
[403] Eisele 2014 op. cit. p. 299
[404] Case C-294/06, [2008] ECR I-203.

to a term-time limit of 20 hours per week, and who had worked part-time as a waiter in a restaurant is to be regarded as a 'worker'."[405] Thus it can be seen that many student migrants cannot be simply identified as students and should be recognized also as workers.

2.5.2.4 Current Immigration Policy Considerations

Shifting focus, while this research has predominately been concerned with how "regular" (or, legal) student migration is regulated within EU, there are related considerations posed by irregular migration. First, issues arise connected to how irrational sentiments surrounding irregular migration influence public opinion about migrants in general. Next, there is the matter of how, in recent years, addressing issues surrounding irregular migration seems to have taken precedence over those of regular migration. Apart from this, the implications of "Brexit" with regard to immigration policy must be considered, and with it, what the departure of the UK could mean for student migrants.

2.5.2.4.1 Irregular Migration to the EU

The 2008 economic crisis contributed to an obscuring, in the court of public opinion, of prior distinctions between the EU citizens in other Member States and third-country nationals, "giving rise to a pernicious comparison by virtue of which all of them have become part of the same generic category, that of 'immigrants.'"[406] These events and sentiments were dovetailed by the migration crisis in Europe, often referred to as the refugee crisis, beginning in 2015. A flood of third-country nationals, many of whom were fleeing situations of armed conflict, sought entry into the EU. Since that time, the EU has faced some of the "highest levels of forced displacement," since the Second World War, with "more than three million individuals, predominantly from Muslim-majority countries such as Syria, Afghanistan, and Iraq, [having] applied for asylum in Europe alone."[407] Concurrent with the recent migratory crisis was a rise of nationalist tendencies and clear anti-immigrant sentiments.

The crisis has also demanded a response, and pushed to the forefront the need for adequately regulated legal immigration to the European Union. The EU's legislative efforts in the sphere of external migration during the last decade and a half, however, have concentrated mainly on the *prevention* of irregular immigration, with the regulation of legal immigration taking a backseat.[408] What's more, in many Member States, "extreme-right parties have sought to leverage natives' anxieties to mobilize voters and enact more restrictive asylum policies."[409] As a result, this "unprecedented influx of refugees and

[405] Martin, D. (2011). The Privileged Treatment Of Turkish Nationals. In *The first decade of EU migration and asylum law*. Guild, E., & Minderhoud, P. (Eds.). Martinus Nijhoff Publishers. p. 78.
[406] Original text: "…dando lugar a una perniciosa equiparación en virtud de la cual todos ellos han pasado a formar parte de una misma categoría genérica, la de 'inmigrantes.'" [Lirola Delgado, I. (2016). Reflections on the Social and Human Dimension of the Economic and Financial Crisis in the European Union. In *EU law after the financial crisis*. J. Schmidt, C. Esplugues Mota, & R. Arenas García (eds.). Cambridge, United Kingdom: Intersentia. pp.255-263.]
[407] Hangartner, D., Dinas, E., Marbach, M., Matakos, K., & Xefteris, D. (2019). Does exposure to the refugee crisis make natives more hostile?. *American Political Science Review*, *113*(2). p. 442
[408] Lirola & Liste 2016 op. cit. p.55
[409] Hangartner et al. 2019 op. cit. p.442

migrants into the EU" has caused "considerable strain" to the Schengen area,[410] and such circumstances have affected the EU's ability to comprehensively address the situation.[411]

In 2015, the Commission's European Agenda on Migration, proposed "immediate measures to cope with the crisis in the Mediterranean and measures to be taken over the next few years to manage all aspects of immigration more effectively."[412] One such measure was the 2016 EU-Turkey Statement, in which the European Council and Turkey "reached an agreement…aimed at reducing the flow of irregular migrants into Europe via Turkey."[413] While this agreement has played "a key role in ensuring that the challenge of migration in the Eastern Mediterranean is addressed effectively," the Commission's 2018 Progress Report on the Implementation of the Agenda emphasized that "shortcomings [do in fact] persist: in particular, the slow pace of examination of asylum applications."[414] Thus, although the migration crisis in Europe "led to the introduction of new policy instruments,"[415] the creation of new initiatives has in part "added further chaos to an already multilayered system."[416] In a June 2018 European Council meeting "further measures to reduce illegal migration" were discussed, yet "no consensus was reached as to how to balance national and EU competences in the field of asylum policy."[417]

Ultimately, the response demanded by the crisis highlighted the need for better-regulated legal immigration schemes for certain groups of migrants entering the European Union. These issues raise questions surrounding third-country national student migrants. First, whether or not anti-immigrant sentiment will adversely affect those coming to the EU to study, either in treatment during their course of study or in their decision to study elsewhere. Second, to what degree increasing numbers of refugee and asylum seekers coming to the EU will coincide with student migrant flows.[418] Third, if institutions of higher education in the EU will develop policies directed towards refugees interested in studying. While the answers to these questions may materialize in forthcoming policy developments, regulation that works to create more legal channels to enter or study in the EU, and further protect the rights of third-country nationals, would work to combat social tensions while also facilitating increased third-country national student mobility to Europe.

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[410] Marzocchi 2018 op. cit. (no pagination)

[411] For example, the Commisson's "relocation scheme," (based in article 78.3 TEU) was "designed to share the responsibility of asylum and border controls" but has failed to, due to the fact that some Member States have complied, while others have "accepted only a fraction of their quota." (d'Appollonia 2019 op. cit. p. 200) This has added to tensions between Member States in the realm of migration policy.

[412] Schmid-Drüner 2019 op. cit. (no pagination)

[413] Sokolska, I (2019). Asylum Policy. European Parliament - Fact Sheets on the European Union. Retrieved from http://www.europarl.europa.eu/factsheets/en/sheet/151/asylum-policy. Accessed August 5, 2019.

[414] Ibid. (no pagination)

[415] Reslow, N. (2019). EU External migration policy: taking stock and looking forward. *Global Affairs*, 1-6.

[416] d'Appollonia 2019 op. cit. p. 196

[417] Ibid. p.200

[418] It should be noted that Directive 2016/801 does not apply to refugees: "2. This Directive shall not apply to third-country nationals: (a) who seek international protection or who are beneficiaries of international protection in accordance with the Directive 2011/95/EU of the European Parliament and of the Council (17) or who are beneficiaries of temporary protection in accordance with the Council Directive 2001/55/EC (18) in a Member State." (Article 2)

2.5.2.4.2 The Interim Uncertainties of "Brexit"

Beyond a focus on irregular migration, the departure of the UK from the European Union will inevitably have an affect on student migration. A Withdrawal Agreement was signed in January of 2020,[419] and the United Kingdom left the European Union on January 31, 2020. A Transition Period began on February 1, 2020 when the Agreement entered into force and is slated to end on December 31, 2020, unless it is decided that the period of transition will be extended. During this time, the EU and the UK will negotiate a "new and fair partnership for the future, based on the Political Declaration agreed between the EU and the United Kingdom in October 2019."[420]

As it stands, the UK is no longer a Member State of the EU or of the EAEC, it will not play a role in EU decision-making, nor will it be represented in EU institutions, agencies, or offices. However, "all EU law, across all policy areas, is still applicable to and in, the United Kingdom, with the exception of provisions of the Treaties and acts that were not binding," and "all institutions, bodies, offices and agencies of the European Union continue to hold the powers conferred upon them by EU law in relation to the United Kingdom and to natural and legal persons residing, or established in, the United Kingdom throughout the transition period."[421] The UK will also continue to "participate in EU programmes and to contribute to the Union's budget covering the period 2014-2020."[422]

Several points in the Withdrawal Agreement, relevant to the future of student migrants in the UK, are worth highlighting. The first, a general observation found in the recitals of the Agreement, indicating that it has "resolved to ensure an orderly withdrawal through various separation provisions aiming to prevent disruption and to provide legal certainty to citizens and economic operators as well as to judicial and administrative authorities in the Union and in the United Kingdom, while not excluding the possibility of relevant separation provisions being superseded by the agreement(s) on the future relationship." Meaning, the conditions laid out in the Agreement are subject to change depending on the outcome of negotiations during this time. A second point of interest is under Part Two of the Agreement, which outlines Citizens' Rights, and relates to the scope of who these rights apply to (Article 10).[423] Of note is that fact that, for now, the

[419] The Council Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (2019/C 384 I/01)

[420] European Commission. (2020). The European Union and the United Kingdom – forging a new partnership: Transition period. Retrieved from https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/brexit-brief/transition-period_en. Accessed March 1, 2020.

[421] Ibid. (no pagination)

[422] Ibid. (no pagination)

[423] "1. Without prejudice to Title III, this Part shall apply to the following persons:
(a) Union citizens who exercised their right to reside in the United Kingdom in accordance with Union law before the end of the transition period and continue to reside there thereafter;
(b) United Kingdom nationals who exercised their right to reside in a Member State in accordance with Union law before the end of the transition period and continue to reside there thereafter;
(c) Union citizens who exercised their right as frontier workers in the United Kingdom in accordance with Union law before the end of the transition period and continue to do so thereafter;
(d) United Kingdom nationals who exercised their right as frontier workers in one or more Member States in accordance with Union law before the end of the transition period and continue to do so thereafter;
(e) family members of the persons referred to in points (a) to (d), provided that they fulfil one of the following conditions:

Agreement only includes those who are residing in the UK (or UK citizens residing in other EU countries) before the end of the transition period. After December 31, 2020, it is yet to be determined what the regulations will be for EU students who would like to begin study in the UK. A second point concerns Title II Rights and Obligations, in the section titled Rights Related to Residence, Residence Documents. Here, Article 18 deals with Issuance of residence documents, stating "1. The host State may require Union citizens or United Kingdom nationals, their respective family members and other persons, who reside in its territory in accordance with the conditions set out in this Title, to apply for a new residence status which confers the rights under this Title and a document evidencing such status which may be in a digital form." In the UK, this has taken form with the EU Settlement Scheme and its "settled" and "pre-settled" statuses.

To stay in the UK after the Transition Period ends, EU, EEA or Swiss citizens who are currently living and studying there will need to apply for this new status, which specifies that "the rights and status of EU, EEA[424] and Swiss citizens living in the UK will remain the same until 30 June 2021," and that, if one applies successfully, he or she "will be able to continue living and working in the UK after 30 June 2021."[425] Applicants will be granted either "settled"[426] or "pre-settled status,"[427] but can later apply to change to settled status after "5 years' continuous residence."[428] [429] Under this system, international students who have been living in the UK will be able to continue studying there.

(i) they resided in the host State in accordance with Union law before the end of the transition period and continue to reside there thereafter;

(ii) they were directly related to a person referred to in points (a) to (d) and resided outside the host State before the end of the transition period, provided that they fulfil the conditions set out in point (2) of Article 2 of Directive 2004/38/EC at the time they seek residence under this Part in order to join the person referred to in points (a) to (d) of this paragraph;

(iii) they were born to, or legally adopted by, persons referred to in points (a) to (d) after the end of the transition period, whether inside or outside the host State, and fulfil the conditions set out in point (2)(c) of Article 2 of Directive 2004/38/EC at the time they seek residence under this Part in order to join the person referred to in points (a) to (d) of this paragraph and fulfil one of the following conditions:

— both parents are persons referred to in points (a) to (d);

— one parent is a person referred to in points (a) to (d) and the other is a national of the host State; or

— one parent is a person referred to in points (a) to (d) and has sole or joint rights of custody of the child, in accordance with the applicable rules of family law of a Member State or of the United Kingdom, including applicable rules of private international law under which rights of custody established under the law of a third State are recognised in the Member State or in the United Kingdom, in particular as regards the best interests of the child, and without prejudice to the normal operation of such applicable rules of private international law;

(f) family members who resided in the host State in accordance with Articles 12 and 13, Article 16(2) and Articles 17 and 18 of Directive 2004/38/EC before the end of the transition period and continue to reside there thereafter.

[424] Iceland, Liechtenstein and Norway are also included.

[425] Government Digital Service. (2018). Apply to the EU Settlement Scheme (settled and pre-settled status). Retrieved from https://www.gov.uk/settled-status-eu-citizens-families/what-settled-and-presettled-status-means. Accessed February 20, 2020.

[426] Settled status means the applicant started living in the UK by December 31, 2020 and has lived in the UK for a continuous 5-year period. Meaning, "5 years in a row [one has] been in the UK, the Channel Islands or the Isle of Man for at least 6 months in any 12 month period," with certain exceptions that waive that requirement such as "time spent abroad in the armed forces." (Government Digital Service, 2018)

[427] Pre-settled status means the applicant does not yet have 5 years' of "continuous residence" when applying but had started living in the UK by December 31, 2020. [Government Digital Service 2018 op. cit. (no pagination)]

[428] One must apply for this before his or her pre-settled status expires.

[429] Government Digital Service. (2018). Apply to the EU Settlement Scheme (settled and pre-settled status). Retrieved from https://www.gov.uk/settled-status-eu-citizens-families/what-settled-and-presettled-status-means.

Universities have also apparently "reassured" EU students currently studying in the UK that fees would not change "for the duration of their courses" and "will continue to have access to existing funding and loan support arrangements."[430] Critics note, however, that EU citizens who want to stay in the UK must learn about this new scheme and how to apply for it in time to be able to successfully do so.[431] It remains to be seen if the timeline and implementation of this system will provide coverage for all the affected EU citizens living in the UK who are interested in staying there.

Outcomes for international students after the Transition Period also remain hard to predict. The negotiations between the EU and the United Kingdom for a partnership for the future are to be based on the Political Declaration of 17 October 2019,[432] which accompanies the Withdrawal Agreement. In it, Section II regarding Areas of Shared Interest, part A. Participation in Union Programmes addresses the fact that "11. ...the Parties will establish general principles, terms and conditions for the United Kingdom's participation in Union programmes... in areas such as science and innovation, youth, culture and education, overseas development and external action..." Part B. on Dialogues goes on to establish that "14. The Parties should engage in dialogue and exchanges in areas of shared interest, with the view to identifying opportunities to cooperate, share best practice and expertise, and act together, including in areas such as culture, education, science and innovation." Additionally, Section IX on Mobility states "48. Noting that the United Kingdom has decided that the principle of free movement of persons between the Union and the United Kingdom will no longer apply, the Parties should establish mobility arrangements." This includes that "51. The Parties agree to consider conditions for entry and stay for purposes such as research, study, training and youth exchanges." While this declaration "sets the framework for" and "establishes the parameters of" the future relationship between the EU and the UK, the provisions and indications above are broad enough to make it difficult to determine what measures will eventually be decided upon.

Thus, the UK's continued "participation in Europe's Erasmus student-exchange scheme" remains in question as "a new immigration act is needed this year" and policy-makers "favour an Australian-style points system that gives no advantages to EU nationals."[433] If students coming from EU countries are ultimately required to "obtain a student visa," and are no longer "eligible for home fees or loans"[434] in the UK after the Transition Period ends, many students may turn to "alternative destinations within the EU like Germany and France" to avoid paying "higher tuition fees" and to enjoy "more potential pathways for work opportunities."[435] [436] There are also socio-political concerns

[430] Mayhew, K. (2017). UK higher education and Brexit. *Oxford Review of Economic Policy*, *33*(suppl_1), pp. s155-s161.
[431] The Economist. (2020). EU citizens' rights after Brexit. [Online] Retrieved from https://www.economist.com /britain/2020/01/25/eu-citizens-rights-after-brexit. Accessed 20 Feb. 2020.
[432] Revised Text, TF50 (2019) 65 – Commission to EU 27
[433] The Economist 2020 op. cit. (no pagination)
[434] Garner, O. (2016). After Brexit: Protecting European citizens and citizenship from fragmentation. *EUI Department of Law Working Paper*, (2016/22). p.13.
[435] Choudaha, R. (2017). Three waves of international student mobility (1999-2020). *Studies in Higher Education*. http://www.tandfonline.com/doi/full/10.1080/03075079.2017.1293872. p.9.
[436] Redden, E. (2016). "British Universities Brace likely Drop in EU Students." Inside Higher Ed. Retrieved from https://www.insidehighered.com/news/2016/06/29/british-universities-brace-likely-drop-eu-students. Accessed February 14, 2019.

as well: similar to the presidency of Donald Trump, the UK's departure from the EU may impact student mobility due to changing social tides. "Both [of] these events in the top two destination countries [for student migrants] had a strong anti-immigration tone that is negatively affecting the perception of safety, post-graduation work, and immigration opportunities."[437] [438] In the case of the UK, this could work to dissuade EU students from pursuing a course of study there.

Ultimately, while these measures address short-term concerns, especially during this period of transition, it is unclear what they will mean in the long-term. There is still "massive uncertainty as to... eventual outcomes" with regard to Brexit overall,[439] and what it will mean for student migrants in the UK after the Transition Period remains to be seen.

2.6 CONCLUSION

This chapter has endeavored to develop the concept of international students as migrants through the lens of international laws and norms, with specific emphasis on US and EU regulation. The aim has been to comprehensively analyze student migrants within the basic structures that underlie international migration law, magnifying current issues and crucial conversations. Several key ideas have been presented.

First, although definitions used by prominent international organizations aim for inclusiveness and versatility, it is these same attributes that create limitations when looking to establish parameters for data collection. Whether countries adhere to the definitions put forth by such organizations, choosing to organize statistical information according to a range of criteria, there remains lack of consistency. While it is clear that migrant categories are treated differently in different national contexts, the international student is singular in that it is a status that can overlap with and span varying migrant classifications. Hence, a central theme to this chapter has been the idea that defining student migrants in such a limited fashion is inadequate to speak to the multiplicity of their roles.

Representing the first comprehensive framework, the 2018 Global Compact for Safe, Orderly and Regular Migration, aims to address certain aspects of this through creating more cohesion in all facets of migration. The Compact presents certain key objectives including more uniform data collection, the minimization of "adverse drivers and structural factors that compel people to leave their country of origin," the bolstering of pathways to regular migration, and further investment in skills development (including mutual recognition of qualifications), to facilitate further streamlined procedures. These advances should have a direct impact on student migration.

The role of soft law instruments, such as the Compact, in providing guidance and addressing particular aspects of international migration not covered by other areas is crucial. These instruments have increased in the last decades through the inclusion of more actors, as well as a heightened need for agreements that address specific

[437] Choudaha 2017 op. cit. p. 9
[438] Najar & Saul 2016 op. cit. (no pagination)
[439] Mayhew 2017 op. cit. p.155

circumstances and scenarios. Within the realm, of chief concern is the importance and role of international educational agreements, one of the soft law instruments in IML particular to student migrants. Discussions surrounding regional governance efforts in the context of international education, institutions of higher education as critical actors in the global scene, and the participation of nonprofit organizations in facilitating international educational agreements lay the groundwork for further chapters.

A second key idea relates to considerations of education and migration within treaty law, specifically in regard to the scope of the right to education. Against the backdrop of the foundations, rationale and sources of IML, the right to higher education, enshrined in a range of international conventions (albeit with provisos) has been deconstructed. The 1960 Convention against Discrimination in Education clearly establishes a more comprehensive understanding of the right to higher education, defining education as "all types and levels of education," and protects the right to access it. National origin should not impede access to education of any type or at any level. Thus, if higher education is inaccessible in one's country of origin, one should have the right to migrate to attain it—an essential principle to student migration.

Further principles, those central to international migration, such as the right to leave, the right to admission and the rights afforded to migrants in host countries, lead to additional observations. Questions are raised in connection to the brain drain issue: whether or not an individual's right to leave in search of work, study, or a better standard of living supersedes that of the rights States have to improve their economic and societal conditions. Importantly, the interplay between State sovereignty and international law commitments was addressed via an analysis of the right to admission and the rights afforded to migrants in host countries. In the context of student migrants, differing approaches for entry requirements are often the result of how national governments choose to address diverse needs and changing political climates. In short, both entry rights and the rights afforded to student migrants in the host country are determined by individual States and are thus not codified as universal. As the Global Compact reiterates and affirms, the domestic jurisdiction of states still governs procedure. Ultimately, while States are compelled to not discriminate, they are within their right to determine policy within their jurisdiction, which applies to student migrants.

This reiterates an important motif of this chapter: the idea that defining student migrants narrowly is inadequate to address the multiplicity of their identity. Within US immigration legislation, for example, the complexities of becoming a permanent resident are evidenced in the case of student migrants. Only candidates from certain nonimmigrant categories are eligible to adjust their status from visitors to immigrants, and students do not qualify. They can eventually become immigrants, but since their visa classification would have to change to achieve that, they would technically no longer be deemed "students." This reflects the problematic nature of treating student migrants exclusively as students, since being in the "student" nonimmigrant visa classification is incompatible with seeking immigrant status, and thus incompatible with permanent residence. If regulations were to provide more flexibility in terms of migrant classification it would allow for the other diverse roles of student migrants (for example, as potential workers) to be incorporated

into the ongoing discussion of migration policy, and facilitate easier and more direct paths to immigrant status. However, as discussed, the current political climate and executive actions under Donald Trump are at odds with such regulatory changes.

The idea that the multifaceted identity of student migrants should be reflected in immigration regulations carries through to the EU. Tensions between the national and supranational level on migration issues has consistently been a defining factor—Member States are hesitant to give up sovereignty in this realm. And, while the regulation of student migrants differs between EU citizens studying in other Member States and incoming third-country national student migrants, both raise questions with regard to equal treatment, and the problematic nature of limiting a student migrant's identity to only that of a student. This motif is again discussed, this time against the backdrop of the elemental free movement of persons and EU citizenship, related issues of competence, and an overview of EU immigration policy.

It is further elaborated on in the regulatory framework of intra-EU student migration. While there has been a concerted effort to address issues of equal treatment in the sphere of entitlement to benefits and grants, there remains diversity between Member States. Setting requirements that are subject to interpretation provokes "case-by-case decisions on applications for basic social benefits" and a highly "individualistic approach."[440] As a result, even though initiatives such as the Bologna Process have helped to unify certain aspects of intra-EU student migration (streamlining academic mobility through different measures) a lack of convergence in regard to other important practical matters creates inequities. Depending on Member States' financial and educational interests, policies can be favorable or unfavorable to intra-EU student migrants, which creates disparities between EU citizens.

The same occurs with third-country national student migrants: even though there have been advances through Directive 2016/801, it also shows the extent to which the different Member States regulate differently. While supranational progress has been made, there is still a lack of harmonization between Member States regarding third-country national student migrants. Additionally, findings further bolster the idea that students are often separated from their other identities, often for the purposes of classifying migrants when regulating immigration. Most notably, student migrants who work ("third-country workers who have been admitted to their territory in conformity with Directive 2004/114/EC") are excluded from equal treatment. This is problematic in that if a student migrant is also a worker, simply by entering as a student they are excluded from certain advantages.

In sum, the student migrant faces certain constraints and disadvantages as a result of being narrowly defined within the context of immigration law. US and EU regulations are indicative of how classifications for student migrants create limitations and separate them from their other identities such as workers, potential workers, or permanent immigrants. It is critical that moving forward the laws and regulations governing student migrants evolve to fit new realities.

[440] Verschueren 2011 op. cit. p.71

3 THE INTERNATIONAL STUDENT AS AN ACTOR OF CULTURAL DIPLOMACY

3.1 INTRODUCTION

Diplomacy, one of the oldest branches of international law, is usually defined as the official and formal relationship between states, covering international economic, political, and cultural domains. Traditionally, states and international organizations were the only diplomatic participants; now, however, there are multiple participants, including NGOs, transnational companies, the media, and academia.[441] These days, the concept of diplomacy has been impacted by the introduction of new information techniques (such as mass communication technology, the internet, and social media), as well as by the internationalization of domestic politics. What is more, the concept of diplomacy has evolved to include non-state actors and interactions, such as "people-to-people contact."[442] This chapter will first expound on these new types of diplomacy within the transatlantic sector, and later delineate some of the tensions inherent in the discipline, where different objectives and exigencies collide.

Since the origins of cultural diplomacy are often cited within a transatlantic framework, meaning the European-American sphere, as a political tool in the interwar period, during the cold war, and beyond, this was an essential starting point to glean an understanding of the international student as a agent of cultural diplomacy. With this as a background, and looking first to the United States as a case study, it can be argued that, the international student has, in the past, represented a means for national governments to spread their aims of cultural ideals. As will be seen, the role of the student has, over time, morphed into that of an individual actor operating in the realm of international relations, in particular as an agent of cultural diplomacy.

Since educational exchange "as a [crucial] form of cultural diplomacy has not received adequate attention in scholarly research,"[443] this chapter seeks to contextualize international study as an integral part of US foreign policy during its most prolific period, and the figure of the international student within that sphere. How individual persons, international students, act as conduits for cultural diplomacy, functioning independently from the State and its objectives, will be analyzed. The shift in US diplomatic relations to include cultural activities, early initiatives of US educational exchange, inherent paradoxes and tensions, as well as competing objectives and efficacy in educational exchange will be laid out. Finally, current scenarios regarding the international student as an individual actor within US cultural diplomacy will be discussed. The underlying question of whether or not the government has the right to dictate the objectives of educational exchange programs, or if these programs should be exempt from political pressures is a persistent theme.

[441] Bolewski 2007 op. cit. p. 17
[442] Ibid. p. 90
[443] Bu, L. (1999). Educational exchange and cultural diplomacy in the Cold War. *Journal of American Studies*, *33*(3), p.393-415.

Alternatively, the trajectory of individuals within the evolution of regional cooperation in education, including international study, has developed differently in Europe. The success of the US to foster an image abroad has not yet been matched in Europe, which has faced difficulties in presenting a collective cultural identity. Thus, the latter part of the chapter, seeks to build off these themes, exploring the internal and external dynamics of cultural diplomacy in the European Union as it relates to international study. Through an examination of EU cooperation in education and relevant policy measures regarding culture and education, these sections will address the complexities and contradictions of a common European identity, as well as the interconnectedness of policy objectives and economic drivers. Efforts of the EU to promote a brand Europe, the role of student exchanges in these efforts, and the inherent tensions therein; the role that self-identity has in this process, and the difficulties in identifying as "European;" as well as the ongoing tensions between Member States, and the resulting lack of harmonization will be considered in an effort to situate the international student as a key actor in the dissemination of EU policy. The considerations and tensions addressed throughout this chapter will be shown to be longstanding, unresolved and ongoing.

3.2 New Types of Diplomacy and the International Student: Conceptual Issues

This section discusses the ways in which the concept of diplomacy has broadened in the twentieth and twenty-first centuries. While once involving only governments, diplomacy has come to include public diplomacy and its various incarnations. It is an example of soft power used to influence perceptions and thinking in other countries through means such as propaganda or people-to-people contact. Cultural diplomacy is one area of public diplomacy, with the narrower aims of spreading one's national culture abroad. International student programs are an example of cultural diplomacy. The students in these programs are non-governmental actors; they are citizen diplomats who function independently from the State and its objectives. In the past two centuries an ever-greater access to information, along with globalization and regional integration, has turned individual persons into conduits for cultural diplomacy.

3.2.1 Cultural diplomacy as a Form of Public Diplomacy

The universally recognized legal frameworks for the formal practice of diplomacy are based in the Vienna Convention on Diplomatic Relations (1961) and the Vienna Convention on Consular Relations (1963), as well as customary international law. "All diplomats are agents of their state and do not act as private citizens."[444] Beyond the realm of the state, however, diplomacy can mean the "promotion abroad of a 'national culture" or an "interactive international cultural exchange,"[445] as outlined in article 3(e) of the 1961 Vienna Convention: "The functions of a diplomatic mission consist, inter alia, in: …(e) Promoting friendly relations between the sending State and the receiving State, and developing their economic, cultural and scientific relations." Meaning, the idea of educational exchange as a form of cultural diplomacy is not necessarily a novel concept—

[444] Bolewski 2007 op. cit. p. 16

[445] Gienow-Hecht, J. C., & Donfried, M. C. (Eds.). (2010). *Searching for a cultural diplomacy* (Vol. 6). Berghahn Books. p.10.

the 1961 Convention established that one of the purposes of diplomacy is the development of cultural relations.

While diplomacy was once limited to governments, over the past century, the concept has expanded to include *public diplomacy*,[446] encompassing a wide variety of actors and activities.[447] In international relations, public diplomacy is the dissemination of propaganda to the public of foreign nations designed to advise and influence. It is diplomacy that is practiced openly in order to influence international public opinion with the aim of achieving diplomatic goals. This form of diplomacy is different from traditional "government-to-government" diplomacy since non-state actors can be involved.[448] Often associated with soft power, public diplomacy has become increasingly integral to the genre of diplomacy. Soft power is understood as the ability of a nation to achieve political outcomes on the world stage, not through military or economic force, but through the persuasion of other countries to want the same, shared goal.[449] The domestic internationalization and foreign export of US higher education have proven ideal mechanisms for soft power, for example.[450]

Cultural diplomacy is one area used in the practice of public diplomacy and is described as the furthering of international relations by cultural exchange through the exportation and promotion of one's national culture abroad. The origins of cultural diplomacy are often cited within a transatlantic framework, meaning the European-American sphere,[451] as a political tool in the interwar period, during the cold war, and beyond.[452] The US had emerged as a superpower, and part of this was the recognition that exchange programs could be among the methods utilized to execute cultural diplomacy objectives, including the spread of a nation's values and ideas; the advocacy of its political and economic systems; and the promotion of its educational philosophies.

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[446] There is not one definition of public diplomacy, however, and the debate on precisely what it entails remains at the forefront of the academic discourse on the subject. The discipline is often separated into two frameworks: "old" unidirectional government communication diplomacy and "new" network relational multi-actor diplomacy. [Huijgh, E., Gregory, B., & Melissen, J. (2013). Public Diplomacy. In *Oxford bibliographies in international relations*. Oxford University Press. DOI: 10.1093/OBO/9780199743292-0018 Retrieved from: https://www.oxfordbibliographies.com /view/document/obo-9780199743292/obo-9780199743292-0018.xml. Accessed March 15, 2019.] This definitional expansion is aimed at broadening the concept of public diplomacy and its critical functions within a changing international plane.

[447] Peterson 2014 op. cit. p.1

[448] Huijgh, Gregory, & Melissen 2013 op. cit. (no pagination)

[449] Nye, J. S. (1990). Soft power. *Foreign policy*, (80), 153-171.

[450] Peterson 2014 op. cit. p.5

[451] It should be noted, however, that "with Western imperialism and colonialism, Western diplomatic culture has spread around the globe," and that although, "European origins of global diplomatic culture are reflected in global diplomatic culture and negotiation style," the "Western face of global diplomacy" can be understood as "a consequence of both its cultural roots and its century-long global dominance—arguably even in countries not colonized." [Eisentraut, S. & Stanzel, V. (2017). Non-Western Diplomatic Cultures and the Future of Global Diplomacy. Working Paper Project "Diplomacy in the 21st Century." SWP Stiftung Wissenschaft und Politik, German Institute for International and Security Affairs. p.3] In this regard, the breadth of research literature on the subject continues to broaden, challenging the "prevailing tendencies in diplomatic studies scholarship" and "the interpretation of non-Western practices through a predominantly Western lens." [Grincheva, N., & Kelley, R. (2019). Introduction: Non-state Diplomacy from Non-Western Perspectives. *The Hague Journal of Diplomacy*, *14*(3), 199-208.] Through highlighting "non-Western contexts," the aim has been "to enrich a growing body of literature that takes a 'post-globalist' approach to the study of diplomacy." (Ibid. p.200) While important to be cognizant of this approach, it is outside the scope of this research, which considers the transatlantic sector.

[452] Gienow-Hecht & Donfried 2010 op. cit. p. 3

Unlike other areas of diplomacy, in the execution of cultural diplomacy the state has limited reach without the support of nongovernmental actors, such as students. This can complicate efforts: when other actors are involved, "the desires, the lines of policy, the targets, and the very definition of state interests become blurred and multiply."[453] This complex dichotomy between diverse interests (such as government-run initiatives and those put forth by private organizations) contextualizes the evolution of the international student as a conduit for cultural diplomacy. If historically the international student represented a means for national governments to promote cultural ideals, the students' role has gradually been transformed into that of an individual actor operating independently in the sphere of international relations.

3.2.2 Transnational Relations and the "Citizen Diplomat"

The broadening of the concept of diplomacy has also widened to include *citizen diplomats*. This can be for either humanitarian or political ends (advocates or lobbyists, for example), or as autonomous agents in international relations.[454] This amplification is based on a political model that incorporates several key concepts. First, the perception of the "citizen as a political actor;" next, the idea of "civil society" as a network of "associations that citizens form and through which they interact."[455] There is an understanding that "politics is a cumulative, multilevel, open-ended process of continuous interaction" involving such elements, and citizens are moving politics back into the societal sphere.[456] [457] This is another definition of power that starts with the citizen, not the state, institutions or political leaders, and directly correlates to the influence that international students abroad may have.

Citizens outside the formal structures of power exercise varying capacities to act together in similar or complementary ways and ultimately produce change. Their power is "their capacity to influence the course of events."[458] Ease of rapid and efficient "access to information" has morphed citizens "into independent observers and assertive participants in globalized relations."[459] As stated, "diplomatic communication, historically based on government-to-government and diplomat-to-diplomat interactions, has expanded to include government-to-people and people-to-people contacts."[460] This occurs "wherever individuals or groups" engage in "cross-border relations with one another."[461] *Constituent diplomacy* is one example of this.

This form of diplomacy refers to a growing international presence of subnational authorities—or, how the participation of regional and local governments in international

[453] Ibid. p.10
[454] Bolewski 2007 op. cit. p. 69
[455] Saunders, H. (2005). *Politics is about relationship: A blueprint for the citizens' century*. Springer. p.20.
[456] Ibid. p. 47
[457] Bolewski 2007 op. cit. p. 69
[458] Saunders 2005 op. cit. p. 20
[459] Melissen, J. (Ed.). (2005). *The new public diplomacy: Soft power in international relations*. Springer. p.24.
[460] Bolewski 2007 op. cit. p. 70
[461] Melissen 2005 op. cit. p. 23

affairs is now a core characteristic of democratic states.[462] The rise of constituent diplomacy can be attributed to growing economic interdependence[463] associated with globalization and regional integration, such as the European Union (EU) and the North American Free Trade Agreement (NAFTA). This has contributed to the democratization of foreign policy, which has the potential to "engender greater citizen awareness, interest and participation in international affairs."[464] The connection is made, then, to see individual persons (such as international students) as conduits for cultural diplomacy. One of the objectives of this inquiry is to explore that role.

3.3 Educational Exchange as an Integral Part of US Foreign Policy

US foreign relations in the twentieth century shifted focus towards an emphasis on cultural activities as an integral part of foreign policy, and early educational exchange initiatives sought to expand US national interests at home and abroad. This section will first provide an overview of the prolific beginnings of educational exchange as a form of cultural diplomacy, covering initiatives spanning the creation of the Boxer Indemnity Fund, the end of WWII, the Cold War. With this as a backdrop, these sections will analyze competing objectives, funding concerns, and how programs were assessed, always taking into account the position of the international student in such scenarios. Considerations over clashing philosophies and a rise in the role of the individual—the international student—as the primary actor in educational exchange will be examined. This first half of the chapter will conclude with an evaluation of the present international student as an individual actor, with special attention paid to the current impact of the Trump administration.

3.3.1 The Shift in US Diplomatic Relations to Include Cultural Activities

Through the practice of diplomacy and the exercise of power, countries have sought to "expand their national interests through education."[465] In this context, it is essential to understand how states, regions, and governments organize cultural diplomacy. This includes what agents are involved, if practices are "formal or informal," and what the ultimate objectives are.[466] Integral to the discussion is identifying the distinctions between "diplomacy, foreign policy, and foreign relations." If diplomacy refers to the "high-level contacts" between the officially designated "representatives of various nations" (such as ambassadors or statesmen), and foreign policy is comprised of all aspects of "a government's formal approach to the [external] world" (including not only diplomatic relations, but also "military, economic, legal," and education and cultural affairs), then "foreign relations" signifies the "sum total" of a nations' interactions with the governments and people of other countries.[467]

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[462] Kincaid, J. (1991). Constituent diplomacy: US state roles in foreign affairs. *Constitutional design and power sharing in the post-modern epoch. Lanham: Jerusalem Center for Public Affairs and University Press of America*, 107-142.
[463] Keohane, R. O., & Nye, J. S. (1987). Power and Interdependence revisited. *International Organization*, *41*(4), 725-753.
[464] Nganje, F. (2014). Paradiplomacy and the democratisation of foreign policy in South Africa. *South African Journal of International Affairs*, *21*(1), 89-107.
[465] Peterson 2014 op. cit. p.1
[466] Gienow-Hecht & Donfried 2010 op. cit. p.10
[467] Hart, J. (2013). *Empire of ideas: The origins of public diplomacy and the transformation of US foreign policy*. Oxford University Press. p.63.

Within this framework, it is clear that US foreign relations in the twentieth century shifted focus towards an emphasis on cultural activities, including educational exchange, as an integral part of foreign policy. "The not-so-obvious, but fundamentally vital aspect of American global expansion [has been] the spread of American values and way of life via educational and cultural activities."[468] This was accomplished by the involvement of US citizens abroad, often in academia.

Indeed, the role of the individual, the private citizen, became an increasingly important facet to executing this strategy. If previously academics travelled abroad as unaffiliated individuals, they were now thrust into acting as representatives of the United States and the American way of life: "the scholar evolved from a cosmopolitan wanderer into a citizen."[469] The "most frequent border-crossing modes of knowledge transfer" became "media ([such as] books and films)," collaborative research projects, or the physical mobility of students and scholars.[470]

3.3.2 Early initiatives of US Educational Exchange

One of the first significant examples of US educational exchange was through the Boxer Indemnity Fund. The Eight-Nation Alliance defeated the Chinese Boxer Rebellion of 1900.[471] An international coalition was set up to suppress the growing uprising. A large indemnity was subsequently imposed on China to compensate for the loss of life and military expenses. The US received approximately 25 million dollars in compensation, but in 1908, Congress passed a bill remitting over 11 million dollars of that money back to China.[472] The funds paid were used to set up the Boxer Indemnity Scholarship Program to educate Chinese students in the United States. Under President Theodore Roosevelt's administration, the program was seen as an opportunity for US-led reform in China that could work to "improve" US-China relations, "bridge cultural gaps," and "promote the image of the US internationally."[473] While initially seen as altruistic, Roosevelt's actions were most likely driven by "national self-interest."[474] This program is one of the early examples of "US non-territorial imperialism" and evidence of national efforts aimed at commanding global respect and leadership.[475] "…By 1926 there were fourteen hundred Chinese Students in the US, more foreign students than from any nation; [and] returnees were already catalyzing change in Chinese life."[476] After a period of success, the grants were suspended by the Communist Party of China in 1949.

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[468] Bu, L. (2003). *Making the world like us: Education, cultural expansion, and the American century*. Praeger Publishers. p. xv

[469] De Wit, H. (1999). Changing rationales for the internationalization of higher education. *International Higher Education*, (15). p.2.

[470] Teichler, U. (2004b). The changing debate on internationalisation of higher education. *Higher education*, *48*(1), 5-26.

[471] The Alliance consisted of Austria-Hungary, Britain, France, Germany, Italy, Japan, Russia, and the United States.

[472] McKee, D. (1991). The Boxer Indemnity Remission: A Damage Control Device?. Newsletter of the Society for Historians of American Foreign Relations, 23(1), 1-19.

[473] Ye, W. (2002). *Seeking modernity in China's name: Chinese students in the United States, 1900-1927*. Stanford University Press. p.90.

[474] McKee 1991 op. cit. p.2

[475] Hart 2013 op. cit. p.52

[476] Arndt, R. T. (2005). *The first resort of kings: American cultural diplomacy in the twentieth century*. Potomac Books, Inc. p.22.

During these early exchanges, for Chinese students studying in the United States, the question of race was ever-present. In 1927, an American social scientist surveyed 1,725 Americans and found that "only 27 percent said they would accept Chinese as fellow workers, 15.9 percent as neighbors, and 8 percent as friends."[477] [478] These biases will reappear in the experience of many future international students.

The Belgian-American Educational Foundation was another instance in the internationalization of education before WWII. The program was established in 1920 using liquidated WWI relief funds. Similar to the Boxer Indemnity Fund, financing came from "relief sources, not the national budget."[479]

There were organizations aimed at improving international student services in the United States. Established in 1911 through YMCA affiliations, the Committee on Friendly Relations Among Foreign Students (CFRFS) was a founding organization in the area of educational exchange. The CFRFS was initially set up to provide support to international students who encountered "racism or social alienation" in the United States.[480] Later, it redefined itself as an organization focusing on entry assistance and community programs. The Institute of International Education (IIE) has also had a longstanding role in international student education. Founded in 1919 at the end of WWI, the IIE propagated the idea that educational exchange would foster understanding between nations. Formed by Nicholas Murray Butler[481], Elihu Root[482], and Stephen Duggan[483], the IIE set up exchange programs for students, educators, and scholars.[484] Duggan went on to serve as the first President of the IIE.[485]

First focused on exchanges in the transatlantic sector, by the 1930s, the IIE offered programs with the Soviet Union and Latin America. The IIE also was instrumental in establishing what is now NAFSA: Association of International Educators[486], and the Council on International Educational Exchange (CIEE).[487] After 1945, the US government contracted the IIE to administer government-sponsored exchange programs, and the organization essentially became an operating agency for the State Department in exchange activities.[488]

3.3.3 Non-Territorial Colonialism and the Role of the Private Citizen

[477] Tsai, S. H. (1986). *The Chinese experience in America*. Bloomington : Indiana University Press, c1986. p.xi.
[478] While racial discrimination against the Chinese was a reality of life in US society, students were generally well received by the educational elite. (Ye 2002 op. cit. p.94)
[479] De Wit, H. (2002). *Internationalization of higher education in the United States of America and Europe: A historical, comparative, and conceptual analysis*. Greenwood Publishing Group. p.22.
[480] Bu 1999 op. cit. p.399
[481] Served as President of Columbia University from 1902–1945.
[482] Former Secretary of State from 1905–1909.
[483] College of the City of New York Professor, and would later serve as Director of the Council on Foreign Relations from 1921–1950.
[484] IIE 2013 op. cit. (no pagination)
[485] Importantly, Duggan had a hand in the government's creation of a new category of nonimmigrant student visas, bypassing immigration quotas enacted by the US Immigration Act of 1921.
[486] NAFSA is a non-profit organization of professionals working in the sphere of international education
[487] The CIEE is non-profit organization that works to promote international education and exchange programs.
[488] Bu 1999 op. cit. p.399

Perceptions of the United States in the world were closely monitored by the government, and during the inter-war period, policymakers began to shift their focus towards shaping those perceptions abroad as a valuable strategy on the path to achieving global hegemony. One rationale describes a "postcolonial," imperialist approach to extending "the influence of the United States" through cultural pursuits "while avoiding the costs of an [expansive] territorial empire."[489] This is linked to what has been deemed a "diplomacy of ideas,"[490] or the use of cultural relations in US foreign policy, propagated during the mid-1930s. *Cultural relations* can thus be defined as a form of state affairs concerned with effecting influence in international politics. In fact, there has been an evolution from seeing cultural relations as a way to increase cross-cultural understanding to using this practice as a potent element of US foreign policy.

Education is a prime area through which "countries have extended their national interests;" it has held a vital position in the advancement of national influence in the post-colonial era.[491] Early educational exchanges and the rise of Western universities as models for higher education around the world bolstered the concept of intellectual or academic colonialism. Conceptually, expatriates would serve as disseminators of American ideals abroad and would come in various forms such as students, teachers, and scholars. While usually applied to the idea of Westerners in non-Western spaces, the strategic promotion of America abroad cut across all areas of the globe. International students studying in the US caught "the virus of democracy," and some US students brought back ideas about different cultures and lifestyles.[492]

Beginning in 1936, the US government's foreign policy initiative, President Franklin Roosevelt's "Good Neighbor Policy," sponsored limited educational and technical exchanges with Latin America.[493] The state was using Latin America as an experiment to develop a worldwide strategy.[494] While the plan professed "non-intervention and non-interference" in Latin American domestic affairs, Roosevelt's underlying goal was to create "economic trade opportunities" and "reassert US influence" in the region.[495] This has been recognized as a policy shift from military dominance to economic hegemony. Originally meant to counteract "European cultural expansion in the Western Hemisphere,[496] the exchange programs became a prelude to the government's involvement

[489] Hart 2013 op. cit. p.3
[490] Ninkovich, F. A. (1981). *The diplomacy of ideas: US foreign policy and cultural relations, 1938-1950*. Cambridge University Press. p.3
[491] Peterson 2014 op. cit. p.1
[492] Arndt 2005 op. cit. p.115
[493] Colligan, F. J. (1958) "Twenty Years After: Two Decades of Government-Sponsored Cultural Relations." U.S. Department of State Bulletin, 39.
[494] Hart 2013 op. cit. p.18
[495] Green, D. (1971). *The containment of Latin America a history of the myths and realities of the good neighbor policy*. Chicago: Quadrangle Books. p.82-92.
[496] During the 1940s, the US government established the Office of the Coordinator of Inter-American Affairs (OCIAA), aimed at promoting inter-American "collaboration" specifically in commercial and economic areas. The OCIAA served as a model for the State Department during this period as it married the cultural with the economic, all under a unified strategy of public diplomacy. (Hart 2013 op. cit. p.32) The agency's function was to distribute US propaganda in Latin America in an effort to combat Italian and German efforts. [Anthony, E. D. (1973). Records of the Office of Inter-American Affairs. United States National Archives and Records Service. Retrieved from https://www.archives.gov/files/research/foreign-policy/related-records/rg-229-inter-american-affairs.pdf. Accessed April

in global cultural exchange" after the Second World War.[497] The United States was interested in crafting a strategy of colonialism different from that traditionally perpetrated by Europe. The idea of converting people to an "American" way of life could resolve the problem, and American citizens abroad would have a role to play.

Image would prove to be a critical facet to US foreign relations, and it was during this time two things became clear; first, that private citizens could and would contribute significantly to determining perceptions of the United States abroad, and second, that policymakers had limited control in this arena.[498] In 1941, Henry Luce of Life Magazine published an article entitled "The American Century." In it, he made clear his understanding of the role of the individual US citizen in foreign policy. He wrote that Americans had to "defend and promote, encourage and incite democratic principles throughout the world."[499] Meaning, the United States was poised to be the most the powerful nation in the world, and its citizens should accept the duty of global influence. Luce was calling on citizens to promote America in the international sphere. Hart points to a paradox associated with this concept of the American century, however.[500] Although there was a consolidation of power economically and politically, the US government had almost no control over cultural dissemination. The image of America abroad was essential, though, and this fact necessitated a radical departure in foreign policy.

3.3.4 Foreign Policy and Cultural Exchanges: Paradoxes and Tensions

Henry Wallace, Vice President under Roosevelt, is one of the people credited with helping to redefine the State Department's approach to diplomacy through his informal participation in advisory board committee meetings. He encouraged the Department to think of culture in a much broader context,[501] and be more representative of the people. He also championed the idea that there isn't a sharp "division between economic action programs and cultural relations" programs—they must complement one another. At a February 1942 advisory committee meeting, Wallace explained that it is the people, the majority of the population, who will decide the success or failure of the government's efforts abroad; public opinion mattered.[502]

Within the Department of State, the Division of Cultural Relations was instituted to direct official international cultural relations activities. It aimed to coordinate the wide diversity of initiatives, including educational exchange.[503] During this time, Yale historian Ralph E. Turner was asked by the Division to prepare an analysis on international relations in the changing global landscape. The resulting 1942 policy memorandum

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26, 2018.] In 1945 it was renamed the Office of Inter-American Affairs (OIAA) and experienced slight changes to its competences.

[497] Bu 1999 op. cit. p.395

[498] Hart 2013 op. cit. p.4

[499] Luce, H. (1941). The American Century. Life Magazine. Retrieved from http://www.informationclearinghouse.info /article6139.htm. Accessed April 25, 2018.

[500] Hart 2013 op. cit. p.213

[501] Ninkovich 1981 op. cit. p.63

[502] Hart 2013 op. cit. p.52

[503] Cherrington, B. (1939). The Division of Cultural Relations. *The Public Opinion Quarterly, 3*(1), 136-138. Retrieved from http://www.jstor.org/stable/2744750

entitled, *The Permanent Cultural Relations Program as a Basic Instrumentality of American Foreign Policy*, asserted that international action in the cultural sphere was as necessary as political and economic action.[504]

Although the report offered concrete, long-term program implementation guidelines, it was not without its critics. Detractors argued that a convergence between cultural inter-change and foreign policy initiatives would invalidate the effect of cultural activities. Cultural exchange was an "inter-nationalist project" to bring people of the world together through intellectual cooperation, and it would be "corrupted by" a foreign policy agenda since foreign policy was "a nation's nationalist imperative abroad."[505] Turner argued that this either/or scenario was based on a false narrative that no longer existed in this new era, as cultural relations would be "at the heart of foreign policy" moving forward.[506] It was time to think of cultural diplomacy as a "permanent component to foreign policy," and to understand it as one of the underlying instruments for modifying attitudes and maintaining global stability.[507] Therein a paradox had emerged: whether or not cultural exchange could be both nationalist and globally minded in motivation.

The debate also highlighted the complex dichotomy between government-run cultural exchange initiatives and those put forth by private organizations. Purists sought to use culture and education for promoting peace, a concept derived from early NGOs such as the Carnegie Endowment for International Peace.[508] Turner's recommendations won out in the end and had a lasting effect on the field of educational exchange. There was now a focus on the importance of educational exchange in the postwar world, and strategic considerations arose on how to harmonize student exchange programs with the objectives of foreign policy, since attitudes acquired by foreign students living in the US would influence international relations. This reconceptualization of foreign relations furthered the idea that any American interest or activity abroad is, by that very fact, of diplomatic concern to the country. The public, including international students, is thus a part of the foreign policy process.

3.3.5 The End of WWII and The Fulbright Program

The Second World War proved to be a catalyst for the emergence of the US as a world power, but ideological threats to the American way of life continued to appear, now with the Soviet Union. Other factors also came into play; the increased access to mass communication technology; the "disintegration" of historical "European empires," such as the British; and the proliferation of new actors on the international stage.[509] Against this backdrop, the concept of diplomacy would grow to include culture as an official tool of foreign policy.[510] Later, a former Assistant Secretary of State for Education and Cultural

[504] Laville, H., & Wilford, H. (Eds.). (2006). *The US government, citizen groups and the cold war: The state-private network*. Routledge. p.69.
[505] Ibid. p.84
[506] Espinosa, J. M. (1977). Inter-American beginnings of U.S. cultural diplomacy, 1936-1948. Washington, D.C.: U.S. Government Printing Office. p.196-197.
[507] Hart 2013 op. cit. p. 59
[508] Ibid. p.63
[509] Ibid. p.8
[510] Ibid. p.24

Affairs, Philip Coombs, would assert that "educational exchange had become 'an irrevocable component of American foreign policy' after World War II."[511]

Historian Frank Ninkovitch argues that, in the postwar period, the US government employed international education initiatives as part of their efforts to exert global influence. Education would come "to serve the administrative and economic interests" of nations as it evolved into an integral part of the development of national identity,[512] which in turn could be disseminated internationally. Cultural interconnectivity between nations was one of the defining goals of the United States during that time. The "government sponsored the formation of the United Nations" and "sought membership" in UNESCO, actions that contrasted with previous attitudes towards the League of Nations and post-WWI global cooperation.[513]

During this time, the international student population in the US grew exponentially. Established in 1946, the Fulbright Program aimed to improve the perception of the US around the world through the exchange of ideas. It provided competitive international scholarships for students, scholars, teachers, as well as other professionals. The program endeavored to "increase mutual understanding between the people of the United States" and other countries through the transfer of knowledge.[514] Calling on the Boxer Indemnity Fund of 1908 and Belgian-American Educational Foundation of 1920 as precedents, Senator William Fulbright amended the Surplus Property Act of 1944 to use foreign credits owed to the US from the sale of unused overseas war properties to finance educational exchange.[515] When introducing the legislation, Fulbright argued that educational exchange "should be" connected to US foreign policy and used to "promote better relations between governments."[516]

The Fulbright program has been exceptional in that it had several distinctive characteristics. It was a collaborative effort between the State Department and private organizations to develop and implement the vision of the Fulbright Act. The Board of Foreign Scholarships appointees and their successors set up "guidelines and standards of excellence" which have made the program a lasting success.[517] Later, the bi-national nature of the program became an important feature in ensuring continued quality and dynamism.

The Fulbright Program continues to be one of the most recognized and prestigious scholarships in international education, but this has not been without past difficulties. Two years after the Fulbright legislation was passed, the US Information and Educational Exchange Act of 1948 (the Smith-Mundt Act), legally authorized the US Department of

[511] Bu 1999 op. cit. p. 397
[512] De Wit 2002 op. cit. p. 4
[513] Bu 1999 op. cit. p.394
[514] Fulbright US Student Program. (2018). Overview. Retrieved from https://us.fulbrightonline.org/about/history. Accessed May 1, 2018.
[515] Vogel, R. H. (1987). The making of the Fulbright Program. *The Annals of the American Academy of Political and Social Science*, 491(1), 11-21.
[516] Thomson, C. & Laves, W. H. C. (1963) *Cultural Relations and U.S. Foreign Policy*. Bloomington: Indiana University Press. p.61.
[517] Vogel 1987 op. cit. p.13

State to engage in propaganda activities. Many felt Smith-Mundt clashed with the work of the Fulbright Program and criticized the conflation of propagandist information with cultural activities. Vanderbilt University President Harvie Branscomb argued "Educational and cultural exchange—not cultural penetration—rests then on a simple and familiar principle. Neighbors who are to cooperate need to become acquainted. In the modern world, all nations are neighbors…Exchange is the natural expression of the democratic principles in which and for which we stand."[518] This act further highlighted the philosophical divide between those who believed in the separation of educational activities from propagandist endeavors and those who advocated for the integration of such pursuits, echoing similar debates in reaction to Turner's 1942 memorandum.

3.3.6 Cold War Programs, Domestic Unrest, and Funding Concerns

Post WWII, in the early years of the Cold War, in an effort to promote the idea of "America" in the world, it was first necessary to recognize that private citizens would form the basis of opinions about America abroad.[519] In 1945, Assistant Secretary of State (William Benton) had stated that foreign relations had expanded beyond the inter-governmental sphere and that the "peoples of the world are exercising an ever larger influence upon decisions of foreign policy."[520] [521] In the context of Cold War political concerns, new cultural policies of the US government were focused on implementing cultural diplomacy through educational exchange. Such exchanges were an important instrument used to combat Soviet propaganda and project favorable images of the United States abroad, highlighting wealth and consumer culture, technology, as well as political democracy. The idea of projecting America throughout the world most likely would have existed regardless, but the emergence of the Soviet Union as a "geopolitical rival" furthered the campaign.[522] Whether through inter-nation "alliances, or a student/scholar exchanges," all of it was "considered fulfillment of American leadership of the free world against the communist world."[523]

Cold War cultural programs were adjusted to reflect their intended audiences, such as the exchanges of "American and Russian writers, artists, and scholars that began shortly after Stalin's death in 1953."[524] State-led exchange programs were dictated by the immediate political aims of the Cold War, and the government was solely focused on how the programs would influence foreign policy. The 1950 Advisory Commission on Educational Exchange report highlighted the diverse objectives of cultural exchange programs. These included the ultimate goals of "Americanizing" other nations, simply advertising accomplishments of US scholarship, or alternatively working to help other countries overcome educational deficiencies.[525] An American writer recalled the impact of

[518] Arndt 2005 op. cit. p. 233
[519] Hart 2013 op. cit. p. 25
[520] Benton, W. (1945) The Role of International Information Service in Conduct of Foreign Relations. *U.S. Department of State Bulletin*, 13 (July–December 1945), 589–93.
[521] Bu 1999 op. cit. p.397
[522] Hart 2013 op. cit. p. 5
[523] Bu 1999 op. cit. p.396
[524] Melissen 2005 op. cit. p.151
[525] United States Advisory Commission on Educational Exchange Activities. (1950). *Third Semiannual Report of the United States Advisory Commission on Educational Exchange Activities*. House document. No. 556. 81st Congress 2nd Session.

the exchanges as follows: "What I sensed they got out of visiting American writers was, to them, our spectacular freedom to speak our minds. I mean, there we were, official representatives of the US… who had no party line at all... and who had the writers' tendency to speak out on controversial issues…"[526] These individuals were presenting the desired image of America as an open democratic society where freedom reigned. Most probably international students from the US studying abroad projected the same image, but that is impossible to know definitively.

By the mid-1950s, as the American civil rights movement took shape, it was also essential to consider how domestic issues impacted foreign policy. Large protests condemning racial segregation and discrimination were nationally publicized and played out on the world stage, in part thanks to mass communication capabilities. The concept of culture expanded to include everything that contributed to perceptions of America, including domestic affairs since the role of national issues was important when projecting an image to the international community.[527] "Image would be the key to the ability of the United States to extend its influence in the postwar period while avoiding the costs of territorial colonialism. In this context, racial discrimination… was more than an embarrassment; it was a fundamental threat to the promise of the American Century."[528] In light of this, the importance of student exchanges and personal interactions remained fundamental.

By this time, educational exchange programs encompassed "a broad range of cultural and economic activities," and "the term became so inclusive" it has been thought of as synonymous with cultural relations in postwar America.[529] Additionally, there was a sort of "division of labor" between critical organizations in the field. The IIE focused on "administering exchange programs for the government," such as Fulbright, as well as for "private institutions," like the Ford Foundation.[530] Alternatively, NAFSA prioritized providing information on "immigration regulations affecting foreign students," training student advisors, "serving as the liaison between academic institutions and the U.S. government and private agencies related to foreign student affairs," as well as addressing issues of interest regarding the same.[531] The CIEE had also shifted gears: first dedicated to educational travel and providing inexpensive sea transportation abroad, the organization later worked to coordinate university study abroad programs.[532]

In the 1950s, The Ford Foundation became an influential new organization within the private international education exchange arena. The Foundation eventually established a "permanent international element," which included foreign studies programs at US universities, and an Office of International Training and Research, "boasting generous

[526] Richmond, Y. (2010). *Cultural exchange and the cold war: Raising the iron curtain*. Penn State Press. p.154.
[527] Dudziak, M. L. (2011). *Cold War civil rights: Race and the image of American democracy*. Princeton University Press. p.153.
[528] Hart 2013 op. cit. p.95
[529] Bu 1999 op. cit. p.393
[530] Ibid. p.400
[531] Bu, L. (1995) *Foreign Students and the Emergence of Modern International Education in the United States, 1910–1970*. (Ph.D. dissertation, Carnegie Mellon University). p.277-278.
[532] Arndt 2005 op. cit. p.114

funding."[533] The Foundation also contributed substantial financial support to the IIE, NAFSA, and the CFRFS in an effort to strengthen their objectives and services. This funding mitigated governmental responsibility to finance exchange programs and proved significant to both the "institutional growth of the IIE and NAFSA," as well as the general structure of US exchanges.[534] Concurrently, the IIE worked as an operating agent to administer exchange projects initiated by the Foundation itself. The IIE, together with the State Department, was consulted on the content and scope of the Foundation's programs, and the programs thus conformed to the government's foreign policy objectives.[535]

In 1953, President Dwight Eisenhower formed the United States Information Agency (USIA) with the aim of addressing public diplomacy endeavors. Later, Eisenhower also established the People-to-People Program in 1956 to enhance international understanding and connection through the direct exchange of ideas and experiences among people from different nations. Eisenhower envisioned educational and cultural activities executed by citizens, not the government.[536] "…Foreign students…were encouraged to learn about American values and democratic ideals while Americans abroad were encouraged to spread American concepts and ways of life."[537] During this time, however, Senator Joseph McCarthy had launched an aggressive, ultimately discredited, campaign against alleged communists within the US government and other institutions. In the climate created by McCarthy, the efficacy of public diplomacy and the motivation for educational exchange programs began to be questioned.[538] As a result of preoccupations with outing communists there was less appetite to invest in the further development of international exchange programs. Ultimately, as the political climate shifted and funds were less readily available, opposing visions of educational exchange and international learning arose.

The political stresses from the Cold War period had exposed fault lines in attitudes toward cultural diplomacy. The US government's previous role in educational exchange during the peak years of postwar cultural diplomacy had increased the political dimension of cultural activities, highlighting the importance of educational initiatives in the global power dynamic, and within this, the role that individual actors could play. By the 1970s, however, there was a further change in the US political landscape, particularly regarding a significant cultural confrontation, with the intellectual sector and universities on one side, and the government and its war in Vietnam on the other. "The mood of the moment did not encourage the universities to ride in defense of cultural diplomacy [and] on the government side, it aggravated government's mistrust of intellect."[539] At the same time, diverse interests and non-state actors were increasingly participating in a "new distribution of political power,"[540] more and more beyond the reach of the government.

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[533] Arndt 2005 op. cit. p.116
[534] Bu 1999 op. cit. p. 402
[535] Ford Foundation Archives. (1951) The Ford Foundation to the IIE: Relationships and Procedures Governing Ford Foundation Exchange-of-Persons Activities.
[536] People-to-People Program. (2018). Eisenhower Presidential Library. Retrieved from https://www.eisenhower.archives.gov/research/online_documents/people_to_people.html. Accessed April 26, 2018.
[537] Bu, 1999 op. cit. p.396
[538] Hart 2013 op. cit. p.188
[539] Arndt 2005 op. cit. p.480
[540] Bolewski 2007 op. cit. p. 89

Additionally, government funding wasn't always widely available for international student education, and over time there was a general constriction of available financing for exchange programs.[541] As early as the "late 1940s and early 1950s," international students had found themselves in poor financial circumstances, which led to an even more complications for institutions of higher education.[542] While it was clear that the government had promoted exchange, it sometimes fell short of offering financial support, and had often been "urged… to take more financial responsibility in exchange programs."[543] [544]

An important example of this relates to the International Education Act (IEA) of 1966. Understood to be a significant piece of legislation, the Act aimed at increasing study abroad opportunities and was "a major attempt by the government to stimulate international education,"[545] —but never received funding. Funds originally intended for the IEA later went to financing the war in Vietnam.[546] Moreover, while the Fulbright Program had proven to be an integral part of US cultural diplomacy, its standing had weakened due to depleted oversight, reduced funding and the high inflation of the mid-1970s.[547] This lack of funding led into a period, the 70s and 80s, in which international education appeared to not be a significant priority for the US government.

3.3.7 US Attitudes Towards International Study as a form of Cultural Diplomacy since the Millennium

Educational exchange and international study both in the US and for US students abroad has generally followed an upward trend. After declining interest in the 70s and 80s, the collapse of the Soviet Empire and its influence most likely contributed to a renewed interest. Since the start of the new millennium, however, further events have affected international student flows: the 9/11 terrorist attacks,[548] the economic downturn of 2008,[549] as well as a rise in nationalism and a rejection of globalism. Most recently, the 2016 election of President Donald Trump has been a significant development; his influence will be discussed shortly.

Cultural diplomacy considerations and the individual as an independent actor remain seminal. Indeed, the "effects" of the presence of international students "on campus and in class [have been brought] to the forefront of discussions in educational research and policy."[550] Arguments in favor of increasing the number of US students who study abroad during their university education cite, for example, the importance of cross-cultural awareness: "Given the United States' determination to project its hard and soft power and

[541] Bu 1999 op. cit. p.407
[542] Ibid. p.407-408
[543] Ibid. p.408
[544] According to a 1949 Special Report from the NAFSA Annual Meeting. [NAFSA. (1949) Special Report: The National Association of Foreign Student Advisers Annual Meeting. 28–30 March. Wade Park Manor, Cleveland, Ohio.]
[545] De Wit 2002 op. cit. p.28
[546] Lee, M. (2012). The Complete History of Study Abroad. Retrieved from https://www.gooverseas.com/blog/history-study-abroad. Accessed February 12, 2019.
[547] Arndt 2005 op. cit. p.481
[548] See Chapter 2, Section 2.5.1.2
[549] See Chapter 4, Section 4.3.2.2.2
[550] Montgomery, C. (2010). *Understanding the international student experience*. Basingstoke: Palgrave Macmillan. p.xi.

preserve its influence in a restless but interconnected world, the almost universal failure of the broader US public to know and understand others, except through a military lens, is not just unfortunate but also dangerous."[551] International study is the first step to gaining fresh perspectives and invaluable knowledge to be infused in one's surroundings upon return. Whether the goal is exporting a national image abroad or acquiring cross-cultural understanding, it the individual who ultimately determines efficacy.

This is echoed by a speech given by former First Lady Michelle Obama at Peking University in 2014. In it, Obama identified a "new era of citizen diplomacy," elaborating that "relationships between nations aren't just about relationships between governments or leaders—they're about relationships between people, particularly young people."[552] As discussed, this is not a new concept, but it may be taking on a new meaning in the technology age as ordinary people all over the world connect more easily and rapidly than ever. If previously the international student has been a cipher, an instrument utilized by and for institutions, this "new era" recognizes the international student, acting independently, as the key conduit of cultural diplomacy in matters of education.

The Trump presidency has exploited this idea to upend support for educational exchange. In 2015, he announced his candidacy for president with a nationalistic appeal that ultimately got him elected. As discussed in the previous chapter, his rhetoric and policies regarding immigration and visas has had an impact on international student flows.[553] Trump's unpredictable[554] foreign policy has caused global consternation, and has had notable effects on international educational exchange. The US government budget for fiscal year 2019[555] under the Trump administration includes "a 74.9% cut to the State Department's Bureau of Educational and Cultural Affairs (ECA)," which handles various "international educational and cultural exchange programs, including the Fulbright exchange and the International Visitors program."[556] The administration justifies such an extreme reduction in funds by arguing that maintaining a variety of government exchange programs "dilutes…overall impact" and "presents challenges to effective program

[551] Ungar, S. J. (2016). The study-abroad solution: How to open the American mind. *Foreign Affairs 95*, 111 [Online]. Retrieved from https://www.foreignaffairs.com/articles/united-states/2016-02-16/study-abroad-solution. Accessed May 17, 2018.

[552] Watkins, T. (2014). Michelle Obama lauds study abroad as 'citizen diplomacy' – CNN Politics. Retrieved from https://edition.cnn.com/2014/03/22/politics/michelle-obama-china/index.html. Accessed March 22, 2019.

[553] See Chapter 2, Section 2.5.1.3

[554] A Foreign Policy Analytics report (2017) that consulted with more than sixty foreign policy experts indicates that Trump's "approach to foreign policy challenges" provokes "policies with inherent internal contradictions and unintended consequences in high-risk areas" as it "introduces unpredictability into the system." [Foreign Policy Analytics. (2017). Foreign Policy in the Trump Administration Report. Retrieved from https://foreignpolicy.com/wp-content/uploads/2019/05/foreignpolicy-trumpadministration-2019.pdf. Accessed September 20, 2019.] Additionally, it has been argued that Trump's attitudes and rhetoric "reflect an important orientation towards world politics, and perhaps toward all human relations: [that] politics and relationships are transactional, based on specific bargains rather than thinking about the long run and creating conditions that will be valuable over time." [Jervis, R. (2018). President Trump and International Relations Theory. In *Chaos in the liberal order: the Trump presidency and international politics in the twenty-first century*. Jervis, R., Gavin, F. J., Rovner, J., Labrosse, D. E., & Fujii, G. (Eds.) New York: Columbia University Press. p.6.] This deviates from the approach of previous administrations to foreign policy.

[555] It should be noted that a perfunctory reading of the published budget report for fiscal year 2020 does not appear to address educational exchange.

[556] Sabatini, C. (2018). The flawed logic of the Trump administration's cuts to exchange programs. Retrieved from https://theglobalamericans.org/2018/02/flawed-logic-trump-administrations-cuts-exchange-programs. Accessed August 15, 2019.

management." Meaning, if the programs are perceived as not fulfilling "strategic foreign policy objectives," the government no longer sees a utility in maintaining them. Of equal importance, the budget report cites the fact that "people-to-people exchanges," and individual students are increasingly relying on "personal and family" sources of "funding and support," as further reasons for the retreat of government involvement.[557] The unstated subtext in all of this is that as there has been increased awareness of the role of the individual, the international student, as the primary actor in educational exchange. Simultaneously, there has been a realization of the challenges faced in effectively managing these individuals to fulfill government's strategic objectives, which has caused this reduction of interest.

Regardless, the current climate created by the Trump administration with its anti-immigrant, "America first" rhetoric will hold weighty consequences. "Whether international students feel welcomed or threatened by the host community, and the extent to which the political ambience of a society is hostile to immigrants more generally"[558] is a crucial consideration with regard to the international student and his or her trajectory as an agent of cultural diplomacy.

3.3.8 Recapitulating Tensions and Debates: Competing Objectives and Efficacy in Educational Exchange

Despite promising beginnings in the years after WWII, over time tensions have ebbed and flowed regarding the use of educational exchange as a cultural diplomacy measure. Beyond funding, other problems arose as well. The underlying issue of inherent conflicting interests was ongoing: government goals vs. educational aims. Debates surged around what role, if any, the government should play in this sphere, in particular with regard to assessment, an area that was proving to be slippery. Objective assessment of the efficacy of programs was elusive due to the subjective nature of the students' experiences, the variables that had to be taken into account, and the differing focuses of the programs' administrators. The role that individualism continues to play has caused widely inconsistent results as to how well educational exchanges have been able to meet the institutional goals and objectives of the programs.

3.3.8.1 International Study, Government Criticisms, and Clashing Philosophies

In the 1950s, government attitudes were aimed at fulfilling political objectives, while university educators focused their attention on long-term educational goals.

[557] "When originally authorized (Mutual Educational and Cultural Exchange Act of 1961), educational and cultural exchanges were an important means of exposing foreign citizens to U.S. culture, and U.S. citizens to foreign culture. The State Department currently manages over 85 separate academic, professional, and cultural exchange programs — double the number that existed in 2004. Having so many different exchange programs dilutes their overall impact and presents challenges to effective program management. Reducing the number of exchange programs to a core few would allow the State Department to focus its management and oversight resources on those programs that have demonstrated results. In addition, globalization has increased significantly since the start of people-to-people exchanges, students as well as other international visitors largely rely on personal and family1 as primary sources of funding and support." [US Government Office of Management and Budget. (2018) Budget of the US Government FY 2019. U.S. Government Printing Office. Retrieved from https://www.whitehouse.gov/wp-content/uploads/2018/02/msar-fy2019.pdf.]

[558] Rose-Redwood & Rose-Redwood 2017 op. cit. p. V

American educators condemned the government[559] because, in their minds, the primary purpose of exchange should be educational and not propagandist.[560] From a scholar's perspective, the goal of the internationalization of higher education within diplomacy is to produce informed citizens who can relate with other cultures in a way that is "culturally sensitive and politically aware."[561] Moreover, it often proved true the larger the gap between a "cultural diplomacy program" and an "associated political or economic agenda," the greater the possibility of the program "meeting its objective more successfully."[562]

The question is whether or not the government has the right to formulate goals and objectives of educational exchange programs simply because of contributory funds, or if these programs should be exempt from political pressures and oversight. If citizen diplomacy increasingly represents the individual operating freely in the personal sphere, international study and cross-border cultural relations cannot logically be wholly controlled by any agenda. From political to educational objectives, it is the individual actor, the international student, who will ultimately affect the outcome. This phenomenon functions in two directions: US international students abroad, and international students in the US.

3.3.8.2 Assessing Impact Over Time

One of the ways to measure the cultural significance and influence of international programs, and international students' interactions, was through program evaluation. Findings from a 1953 survey[563] indicated that academic institutions felt that the government had to do a better job of defining the objectives of exchange programs so that universities would subsequently be more successful at fulfilling established functions.[564] In the realm of contemporary educational exchange, the government has become less involved in most international education programs as universities have launched internal programs and taken on more autonomy. Some indications of this began in the 1950s, with studies conducted by foundations in an effort to gauge the impact the US system had on international students; it was used to assess whether or not exchange programs met established goals.

Of note was a 1951 study[565] that looked at Western European students to assess their experiences in the United States.[566] The study centered on the effects of American

[559] Extensive government involvement is sometimes critiqued for "infringing on academic freedoms and university autonomy." (Teichler 2004b op. cit. p.15) It should be noted, however, the government surely has a role to play. Creating mechanisms for accreditation or systems of assessing achievement seem to be appropriate areas for government engagement in higher education. Academic quality needs to be properly evaluated, which often requires external assessment and not necessarily evaluation systems internal to an institution that can be laden with the selfish goals of stakeholders; a balance should also be struck between the pursuit of knowledge and its societal relevance. (Ibid. p.15)

[560] Bu 1999 op. cit. p.409

[561] Özler, Ş. İ. (2013). Global citizenship versus diplomacy: Internationalisation of higher education with a collective consciousness. Weaving the future of global partnerships, 13-18.

[562] Gienow-Hecht & Donfried 2010 op. cit p. 4

[563] The Department of State's US Advisory Commission on Educational Exchange oversaw a 1953 survey to evaluate aspects of the International Educational Exchange Service. The study reached out to institutions for information about exchange programs and received responses from over 300 universities and organizations.

[564] Bu 2003 op. cit. p. 211

[565] The study was sponsored by the Fund for Adult Education, a subsidiary of The Ford Foundation.

learning on international students and if their views of the United States had changed as a result. Importantly, the studies also sought to address the impact of international students on US classrooms and society in general. While the study characterized students as "potential advocates of [the] American way of life," the students themselves discussed experiencing strong isolationist sentiments in American society and that their experiences, often only as year-long exchange students, were too short, with most of their time spent on the university campus.[567] Bu argues that the findings indicated that exchange students became *more* critical of the US, even though higher education institutions "tended to evaluate the programs as worthwhile and effective." Exchange students complained of American "racial prejudices, and their own limited contact with American people."[568]

University officials believed that international students contributed to the "broad educational objectives of universities through creating a cosmopolitan atmosphere by offering American students a cross-cultural experience and advancing better relations and understanding between Americans and foreigners."[569] [570] For their part, international students were amenable to educating US students about their home country and culture. Many found, however, that American students had little interest in expanding their knowledge about foreign cultures. It should be noted that it seems to have primarily depended on the region of origin as well. Students from Europe, for example, reported some curiosity from American students, while students from other areas, like Latin America or Africa, found US students generally disinterested in their cultures.[571] This is significant in that it provides insight into whether or not the educational objectives of universities at that time were in fact fulfilled.

During this time, the Social Science Research Council assembled a Committee on Cross-Cultural Education to conduct a years-long series of studies on international students in the United States.[572] Later published in the book *Attitudes and Social Relations of Foreign Students in the United States* (1963) by Claire Selltiz and her collaborators, the research sought to address the experiences of international students in the US. Using interviews and questionnaires, the study gained insight into the effects of cross-cultural interactions on international students. Specifically, "inter-group relations" were used to evaluate the international student experience and eventually offer guidance aimed at improving programs.[573]

The primary hypothesis addressed by the studies was if international students who had deeper and more established social relations with Americans were more likely to develop favorable attitudes toward the United States. The authors looked at three types of educational settings: small colleges in small cities, large universities in small cities, and

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[566] Bu 2003 op. cit. p. 210
[567] Ibid p. 210
[568] Bu 1999 op. cit. p.406
[569] Higbee, H. D. (1961). The status of foreign student advising in United States universities and colleges. Institute of Research on Overseas Programs, Michigan State University. p.11.
[570] Bu 2003 op. cit. p. 204
[571] Ibid. p. 204-210
[572] Kelman, H. C. (1964). Review: Attitudes and Social Relations of Foreign Students in the United States. Claire Selltiz, June R. Christ, Joan Havel, and Stuart W. Cook. *American Anthropologist*, *66*(6), pp.1461-1463.
[573] Bu 2003 op. cit. p.213

large universities in big cities. Each of these instances offered different degrees of "interaction-potential" with American society, and students' experiences were compared.[574] A 1964 review of the study contended, "indications [suggest] that those students who interact more fully with Americans show (after about eight or nine months in the country) more favorable attitudes toward Americans as individuals and toward certain aspects of American life (notably toward personal and social relations in America; much less so toward broader institutional patterns and American foreign policy)."[575] Other analyses argue that even with comprehensive data spanning years, the project was unable to produce consistent, definite conclusions.[576] Nonetheless, if accurate, this is indicative of the important role the individual citizen can have on impacting foreign perceptions. While it does not exactly illustrate the ways in which international students abroad disseminate cultural ideals since no information was provided as to how the American citizens were influenced by the interactions, it sets the stage for the importance and functionality of individual actors in transnational contexts.

3.3.8.3 Individualism in International Study

The common conception is that international students are in fact an influential force at the host institution. Educational exchange programs continue to be widely thought of as beneficial to host faculty and students given the fact that perspectives are often "broadened" through "interaction with international students" and these "positive relationships promote future goodwill between nations as many international students are or will become leaders in their home countries."[577] Also, that "students engaged in international programs function as diplomats in our increasingly integrated world, and the perspective they adopt about their role in the world is crucial to our ability to address global problems."[578] In fact, a 2010 UN Report on the Right to Education for Migrants, Refugees and Asylum Seekers found that the migrant, refugee and asylum-seekers' existence in national education systems "could be drawn upon more systematically to enrich and enhance non-formal and formal learning environments, and thus the learning experience of all students."[579]

Alternatively, a study done in 2010 suggests a somewhat different view of international students, their experience studying in higher education, and those around them. In the study the author presents a picture of an international student group in which the individuals seem to be "benefiting from the effects of internationalization of Higher Education possibly more than their home student counterparts."[580] These results illustrate the point that evaluating the cultural "success" of educational programs through the lens of student experience presents a complex dichotomy of circumstance and subjectivity. If, for example, the goal of international study is cross-cultural interaction that benefits both home country students as well as international students, it may not always be achieved.

[574] Selltiz, C. (1963) *Attitudes and Social Relations of Foreign Students in the United States*. University of Minnesota Press, p.94-98.
[575] Kelman 1964 op. cit. p.1462
[576] Bu 2003 op. cit. p.213
[577] Lee 2008 op. cit. p. 2
[578] Özler 2013 op. cit. p. 14
[579] As discussed in the previous chapter, while the findings were most likely in reference to compulsory education, the same report indicated that the right to education "should transcend primary and/or compulsory education."
[580] Montgomery 2010 op. cit. p.xii

Additionally, the level of diversity in the international student experience, what is absorbed, and how one chooses to interpret or react to different scenarios speaks to an increasingly important degree of individualism. The autonomy each student has in shaping perceptions can produce vastly distinct outcomes. Thus, international student experiences and actions do not necessarily automatically fulfill or align with professed institutional objectives, whether governmental or from the university.

As has been shown, US attempts to spread "Americanism" around the world through cultural diplomatic means, including educational exchange programs, have encountered complexities in several spheres. If the approach of US foreign relations in the twentieth century expanded to include cultural activities (such as educational exchange) as an important part of foreign policy, during the same period, foreign relations in Europe saw the beginnings of European integration. It won't be until later that the European Union was consolidated, and, as will be seen, Europe will similarly endeavor to utilize international study to spread its values. While the EU has faced some of the same issues as the US, others are uniquely European.

3.4 International Study in the European Union as a Crucial Component to Integration and External Action

As the previous sections detailed, the concept of diplomacy broadened in the twentieth and twenty-first centuries. While once involving only governments, diplomacy expanded to include public diplomacy and its various iterations, one of which is cultural diplomacy. As seen through the lens of US history, international student programs are an example of cultural diplomacy. In Europe, the origins of these programs manifested differently. The students themselves were forming international student organizations prior to government involvement. Albeit in a different context, this furthers the concept that individual persons, international students, are conduits for cultural diplomacy. The subsequent creation and dynamics of the process of European integration up to the current European Union will establish a specific and particular scenario for the examination of this issue.

Within diplomacy, "the notion that international trade is a means of diffusing tension and bringing nations together"[581] can be used to contextualize the origins of European integration. If at first regional integration in Europe would be described as having economic aim s it would later expand and evolve to include broader socio-cultural objectives. In this line, if cultural diplomacy can be understood as a "practice that operates in the name of a clearly defined ethos of national or local representation, in a space where nationalism and internationalism merge,"[582] it can be contended that over time the increasingly consolidated multilateral objectives of the European Union came to represent a more cohesive ethos, utilizing transnational education and student mobility to further the process of integration and subsequently to project the ethos of the EU abroad. In the United States the international student initially represented a means for the government to spread cultural ideals, ultimately morphing into individual actors operating in the realm of international relations as agents of cultural diplomacy. In Europe, however, the

[581] Schiff, M., & Winters, L. A. (1997). Regional integration as diplomacy. The World Bank. p.4
[582] Ang, I., Isar, Y. R. & Mar, P. (2015). Cultural diplomacy: beyond the national interest?. *International Journal of Cultural Policy*, *21*(4), 365-381.

international student in the context of cross-cultural education has represented a key component to European integration, first as a conduit for strengthening multilateralism, carrying out the vision of cooperation in education which was seminal for cooperation in additional areas, and later as an instrument to epitomize the essence of Europe internationally.

The following sections seek to develop the aforementioned themes, exploring first the origins of European cooperation in education[583] to lay the groundwork for a later analysis of the more recent internal and external dynamics of cultural diplomacy in the European Union as it relates to international study. The EU's policy support of international student mobility and engagement in the internationalization of higher education bring up different types of considerations for the individual actor. With EU policy measures in culture and education as a background, this section will address the complexities and contradictions of a common European identity, as well as the interconnectedness of policy objectives and economic drivers. Later, the lack of harmonization between Member States as a counterbalancing force against the strategic aims of "brand Europe" will be analyzed in the context of EU external action considerations.

3.4.1 20th Century International Study Origins in Europe: Student Organizations, the Individual and Citizen Diplomacy

In the history of the trajectory of the role of international students within cultural diplomacy in Europe during the 20th century, student organizations were among the earliest examples. As discussed, the post-WWI era had attempted to usher in new international understanding. In 1919, through a French initiative, delegates from 17 countries organized the first international student congress— a permanent international association "linking together national student organizations." The Central Powers at first were not included, as the initial title reflected: *Réunion des Etudiants Alliés*.[584] Through the support of English and Dutch students, however, representatives from the Central Powers were admitted in 1924, taking on the new name *Confédération Internationale des Étudiants* (CIE).[585] The CIE[586] promoted the exchange of students, international student facilities and studies relating to higher education and student life. The original French initiative, organized by delegates, anticipates the role the individual citizen can and will play in cultural diplomacy—an area within the broader discipline of diplomacy, which was at the time considered the exclusive purview of governments.

Student associations in other countries also sought cross-national understanding. In Central and Western Europe, certain student associations developed in line with the aims

[583] While a comprehensive history on European cooperation in education has already been extensively treated in research literature (See Pépin (2006); Corbett (2005); Valle (2004); among others) and is not the principle focus of this line of inquiry, a general policy background that highlights the evolution of how education policy has evolved alongside European integration is essential to contextualizing the role of the international student as it relates to cultural diplomacy endeavors. The timeline will thus be tailored to significant events and developments that highlight the intersection of European cooperation in education and foreign policy.

[584] Altbach, P. G. (1970). The international student movement. *Journal of Contemporary History*, *5*(1), 156-174.

[585] Rüegg, W. (Ed.). (2004). *A history of the university in Europe: Volume 3, universities in the nineteenth and early twentieth centuries (1800–1945)* (Vol. 3). Cambridge University Press. p.356

[586] The League of Nations officially recognized the CIE as a worldwide representative student organization in 1937, but it ceased functioning when the Germans invaded Belgium in 1940. (Rüegg 2004 op. cit. p.356)

of the League of Nations and world peace advocates, and contacted each other at the international congresses of the Friends of the League of Nations. These events "connected student leaders and expanded bilateral contacts," ultimately aiming to promote "reciprocal understanding" between different nations.[587] More recently, as will be seen, the student organization AEGEE (originally called EGEE) sought to further the process of European integration in the late 80s, and would eventually have a hand in promoting the Erasmus program, launched in 1987.[588] The role of these students can very much be construed as within the realm of diplomacy—they represent their country, albeit informally, in the exercise of international relations.

Since that time, the individual actor has continued to represent a key component to EU cultural diplomacy within transnational education. International students function as quasi-representatives of their countries (if not their governments) through their social networks, which further enhances mobility. "There is overwhelming evidence that decisions and choices of students concerning exchange and degree mobility are grounded in their social networks..."[589] Sentiments of social responsibility and involvement extend into other arenas as well. The findings of a 2018 study[590] conducted in England and Ireland indicate that students felt they had an "important role to play politically" and identified themselves as "a resource for society and their communities" with regard to having "the potential to be politically active." While this particular study did not look at international students, one might deduce that similar attitudes of responsibility towards political involvement might be extended to other groups of students within higher education. Even though the influence of international students as actors in cultural diplomacy was not addressed in this study, it furthers the argument that individual student actors are increasingly playing a valuable societal, even political, role.

3.4.2 European Integration and the "Intergovernmental-Supranational Dichotomy"[591]

As has been discussed at length, US foreign relations in the 20th century shifted focus towards an emphasis on cultural activities as an integral part of foreign policy, and early educational exchange initiatives sought to expand US national interests at home and abroad. Following WWI, the US propagated a "new diplomacy" to rival that of Europe's traditional diplomatic practice which was followed by the main European colonial powers.[592] Later, after WWII, the US would prove to be a driving force in the emerging

[587] Rüegg 2004 op. cit. p.357
[588] The evolution of Community policy in education will be further looked at in later sections.
[589] Wells 2014 op. cit. p.23
[590] Abrahams, J., & Brooks, R. (2019). Higher education students as political actors: evidence from England and Ireland. *Journal of Youth Studies*, *22*(1), 108-123.
[591] Beerkens, E. (2005) Transnational the European Education Area Actors Higher European opportunities and institutional embeddedness. In *Transnational European Union: Towards a Common Political Space*. Kaiser, W., & Starie, P. (Eds.) p. 173.
[592] The European diplomatic system of international relations that began during the Renaissance and dominated until the end of WWI represented traditional diplomacy. This system was characterized by secret diplomacy and the creation of permanent embassies. [Lewis, O. (2008). To What Extent was Diplomacy Professionalised in the French System? Retrieved from https://www.e-ir.info/2008/03/30/to-what-extent-was-diplomacy-professionalised-in-the-french-system/. Accessed January 5, 2019.] Traditional diplomacy reached its apex during the hundred years that followed the 1815 Congress of Vienna. During this era, Europe's economic and political control reigned supreme. However, "the relentless competition for acquisition of wealth and colonies…eventually poisoned relations among the great European powers,"

international system, as is exemplified through its role in the creation of the United Nations and during the Cold War. Thus arose an interest in economic integration in Europe: the knowledge that national markets in Europe were both in competition yet "interdependent," along with the observation of a more comprehensive and expansive US market highlighted a necessity for economic integration.[593] It was during this time that Europe began its process of regional integration through the creation of the European Communities as international organizations.[594]

The idea of integration is not a novel one, as the history of Europe is "marked by many attempts to organize the multitude of nations and ethnicities into a more or less coherent political entity with competing views of how the different states should be related and the degree to which autonomy and sovereignty should be preserved."[595] In this line, throughout the process of integration in the 20th century, the principal question has often been "whether regional integration is the concerted pluralist articulation of national interests," or if it is more oriented towards "developing the characteristics of a supranational state, in which a new level of governance covers the region as a whole, not as individual nation-states."[596] Thus the tensions between the two main philosophies regarding the European Union: supporters of one stress the role of the Member States and their intergovernmental affairs; followers of the other focus on the importance of the European institutions. Those in the former camp, often deemed "intergovernmentalists," maintain that "the Community and the Union have not wrought any fundamental change in the relationships among the member states, whose governments continue to pursue their national interests and seek to maximize their power within the EU and elsewhere."[597] After all, the power that national governments hold in EU affairs should not be "underestimated," with their "status as the signatories of the Union's treaties" and well as "their power of decision in the Council that represents the Member States."[598]

The alternative perspective provides the counterweight in this theoretical debate. Originally termed "federalist" in the early days of integration, this stance regarded "nationalism as the major threat to a peaceful continent" and sought "more than the creation of a series of functional economic agencies," and instead aimed to move towards "unification," which would mean "all layers of government—local, regional, national and European—should cooperate with and complement each other."[599] This viewpoint connects the idea of transferring power to the EU with an increasing incapacity of national

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and the onset of WWI marked the end of the Concert of Europe, and with it, the traditional understanding of "old" diplomacy. [Spies, Y. K. (2018). *Global Diplomacy and International Society*. Palgrave. p.4.]

[593] Kaiser, W., & Varsori, A. (Eds.). (2010). *European Union history: themes and debates*. Springer. p.140.

[594] The beginnings of the European Union were grounded in the European Coal and Steel Community (ECSC) (established by the 1951 Treaty of Paris), the European Economic Community (EEC) (established by the 1957 Treaty of Rome) and the European Atomic Energy Community (EAEC) (established by the 1957 Euratom Treaty). Subsequently, the EU was formally established when the Treaty of Maastricht (officially titled the Treaty on European Union, or TEU) came into force (November of 1993).

[595] Staab, A. (2011). *European union explained, second edition: Institutions, actors, global impact*. Indiana University Press, Second edition. p.4.

[596] Beerkens 2005 op. cit. p.173

[597] Pinder, J. & Usherwood, S. (2018). *The European Union: A Very Short Introduction*. Fourth Edition. Oxford University Press, UK. p.6.

[598] Ibid. p.6

[599] Watts, D. (2008). *The European Union*. Edinburgh University Press. p.7

governments to effectively address transnational issues, even though it acknowledges that Member States should continue to control matters that they can still properly address. The EU is "not designed to replace member states, but rather to transform them into integral parts of a cooperative venture: citizens' identities gain a new layer that interacts with their existing ones."[600] This perspective has morphed into the "supranationalist" viewpoint in current discourse.

These contrasting philosophies should not be minimized when exploring how education and culture have evolved within the process of European integration. As addressed in the previous chapter, eventually the principle of subsidiarity would be articulated in the TEU,[601] but tensions between the national and supranational level persist. Interestingly, Ján Figel, European Commissioner for Education, Training, Culture and Multilingualism (2004-2007), wrote that the education sector "has been a pioneer in implementing the principle of subsidiarity," even before the principle was enunciated in the treaties: "in seeking to find a way forward that was acceptable to all concerned, this sector put the principle of subsidiarity into practice before it had even been developed."[602] As will be discussed in later sections, culture and education are policy areas in which the EU has supporting competences.

3.4.3 Transnational Education within Integration: the Role of the Council of Europe, the Hague Summit and the Janne Report

Alongside the beginnings of economic integration in Europe, there emerged a wider interest in safeguarding and promoting the ideals and principles that constitute its common heritage. An important development in the field of foreign policy just prior to the establishment of the European Coal and Steel Community (ECSC) in 1951 was the 1948 Treaty of Brussels,[603] which would later be referred to as the West European Union (WEU). Significantly, Article III of this treaty states that the signatories "will make every effort in common to lead their peoples towards a better understanding of the principles which form the basis of their common civilisation and to promote cultural exchanges by conventions between themselves or by other means," including cultural exchange as a key point in the foreign policy discourse. Given the fact that these were "institutions with predominantly diplomatic and military ambitions, it was surprising that the Organisation of the Treaty of Brussels and its successor, the WEU, took an interest in culture and education."[604] That the Brussels Treaty, "a treaty of mutual defence between the 'victors'—the UK, Belgium, the Netherlands, Luxembourg and France...included cooperation in education and culture, sectors consistently seen as tools of diplomacy,"[605] represents an important early indication of the role of education in European diplomatic

[600] Pinder & Usherwood 2018 op. cit. p.8
[601] The legal foundation for the principle of subsidiarity is Article 5(3) of the TEU and Protocol (No 2) on the application of the principles of subsidiarity and proportionality. See Chapter 2, Section 2.5.2.1.1.
[602] Pépin, L. (2006). *The history of European cooperation in education and training: Europe in the making-an example*. Publications Office of the European Union. p.21.
[603] Signed by Belgium, France, Luxembourg, the Netherlands and the UK.
[604] Ibid. p. 49
[605] Corbett, A. (2005). *Universities and the Europe of knowledge: Ideas, institutions and policy entrepreneurship in European Union Higher Education Policy, 1955–2005*. Springer. p. 37.

endeavors. Later, the WEU would support "university cooperation at a very early stage, [transferring] its activities in this area to the Council of Europe in 1960."[606]

The Council of Europe[607] itself, established in 1949, recognized study abroad as an important element of European integration, demonstrated by the Council's European Cultural Convention of 1954. In it, participating countries were encouraged to promote the study of the "languages, history and civilization" of both their own countries as well as the other countries of Europe, including through facilitating international study between countries.[608] Several other treaties considered issues relating to study abroad such as equivalence of diplomas [609] and periods of study, [610] recognition of academic qualifications,[611] and study abroad scholarships.[612] Educational exchange had not been directly addressed, however, in the 1957 Treaty of Rome establishing the European Economic Community (EEC). That said, Article 57 of the treaty laid the groundwork for certain measures to facilitate study abroad, calling for the issuance of "directives for the mutual recognition of diplomas, certificates and other evidence of formal qualifications." In Europe, the Council of Europe remained "the main (intergovernmental) forum for cooperation in the area of education and culture" up through the 1970s, and the Community would not address education until later as "its economic and social development" became increasingly intertwined.[613]

In the 1960s, the continued importance put on educational exchange, and the role of students, in fostering relations between Member States was evident. In January of 1963 Chancellor Adenauer of Germany met with President de Gaulle of France at Reims to further the process of political reconciliation, and "one of the foremost practical measures which emerged was their agreement about exchanges between the young people of both countries," with the two agreeing to terms for the exchange of "tens of thousands of young people to visit each other's country each year."[614] On the supranational level, the growing interest in expanding Community action to include the area of education, in addition to what was already being done in economic and social arenas, persisted. Eventually, the European Parliament requested in 1969 "for the Europeanisation of universities as the foundation for a genuine cultural community."[615] The 1969 Hague Summit "stressed the importance of preserving an exceptional centre of development, progress and culture in

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[606] Pépin 2006 op. cit. p.22

[607] Separate from the EU, the Council of Europe brings together 47 member states in an effort to "promote democracy and protect human rights and the rule of law in Europe." [Council of Europe (2019) Who we are. Retrieved from https://www.coe.int/en/web/about-us. Accessed August 15, 2019.]

[608] Article 2 states, "Each Contracting Party shall, insofar as may be possible:

a. encourage the study by its own nationals of the languages, history and civilisation of the other Contracting Parties and grant facilities to those Parties to promote such studies in its territory; and

b. endeavour to promote the study of its language or languages, history and civilisation in the territory of the other Contracting Parties and grant facilities to the nationals of those Parties to pursue such studies in its territory."

[609] The European Convention on the Equivalence of Diplomas leading to Admission to Universities (opened for signature in 1953)

[610] The European Convention on the Equivalence of Periods of University Study (1956); the European Convention on the General Equivalence of Periods of University Study in (1990)

[611] The European Convention on the Academic Recognition of University Qualifications (1959)

[612] The European Agreement on Continued Payment of Scholarships to Students Studying Abroad (1969)

[613] Pépin 2006 op. cit. p.22

[614] Brock, C., & Tulasiewicz, W. (Eds.). (2000). *Education in a Single Europe*. Routledge. p.ix.

[615] Pépin 2006 op. cit. p.23

Europe and of ensuring that young people were closely involved in it."[616] This is significant in that it once again makes clear that the individual, the student, is identified as a key element being called upon to execute policy.

Another significant development that spurred from the Hague Summit, this time in the area of foreign policy, was the establishment of the European Political Cooperation (EPC). Externally, "the first attempt to establish a coherent foreign and defense policy at the European level" had been in 1952 via the "ambitious plan" of French Prime Minister Pleven for a European Defence Community (EDC); this never came to fruition since "French Parliament refused to ratify the EDC" in 1954.[617] The subsequent proposal "to foster foreign policy at a European level" came at the Hague Summit in the form of the EPC.[618] Beginning in the 1970s, "there was a greater attempt to harmonise foreign policies within the Community" through the EPC approach, first "conducted on an intergovernmental basis outside the formal provisions of the Treaty of Rome," but later formalized through the Single European Act (1987), which laid out the "process of foreign policy consultation and cooperation between the member states."[619] As explained below, these developments are significant in that collective foreign policy efforts on the European level were materializing alongside cooperation in education.

Between 1970 and 1972 significant strides were made "in the history of higher education in the Community."[620] The first meeting for the Education Ministers was in 1971, and in 1972, Professor Henri Janne[621] was asked to "give thought to the content of a Community education policy."[622] That year, Janne "was presiding over the education aspects of the European Cultural Foundation (ECF)'s prospective on the year 2000, Plan Europe 2000," and was appointed by the Commission within "the strategy of getting an expert contribution to policy making."[623] One of the questions faced was whether or not the Community should make a European study abroad semester obligatory. Among the conclusions articulated in a Commission Information Memo Summary of Janne's report,[624] it was found that although "national structures and traditions" must be respected in education, it was necessary to also "promote the essential harmonisation by means of regular consultation at all levels and to institute an increasing number of educational exchanges." The notion that "above all, education and teaching must be used to enable the European peoples to get to know each other better than in the past" was put forth, notably through such measures as the "cautious and gradual education leading to a sense of 'European citizenship,' to be based essentially on the practices and institutions of the Community, on pluralism and democracy." This idea of promoting "European citizenship" which will be further discussed in later sections will be a recurrent objective throughout the process, and arguably one of the principal elements to the role of international students

[616] Ibid. p.23
[617] Staab 2011 op. cit. p.131
[618] Ibid. p.131
[619] Watts 2008 op. cit. p.234
[620] Corbett 2005 op. cit. p.73
[621] Janne was a "former Belgian Minister of Education." [Field, J. (1998) *European Dimensions, Education,Training and the European Union*. London, Jessica Kingsley. p.30.]
[622] Pépin 2006 op. cit. p. 23
[623] Corbett 2005 op. cit. p.71
[624] Bulletin of the European Communities, Supplement 10/73 (1973)

within educational exchange. The conclusions also noted that "the participation of non-member European countries in the activities of the Community must also be encouraged," not overlooking the external dimension to educational cooperation.

With the first enlargement of the Community in 1973, cooperation was addressed and "for the first time, it included a specific directorate for education and training."[625] The adoption of a Communication,[626] a separate subsequent Resolution[627] and the forming of an education committee in 1974 served as building blocks for forthcoming cooperation. This culminated in the Action Programme[628] in the field of education. Approved in 1976 by the European Council, it "marked the start of a formal European educational policy."[629]

In the recitals, the Action Programme asserts that it is "aware of the contribution such cooperation can make to the development of the Community," highlighting the importance of collaboration in the field of education to the integration process. This point is essential to understand: transnational education and exchange were key components to the further development of internal international relations within Europe, especially with regard to the furthering of the integration agenda. The Action Programme laid out various important measures such as the "promotion of closer relations between educational systems in Europe" which is "necessary to improve mutual understanding of the various educational systems in the Community and to ensure continuous comparison of policies, experiences and ideas in the Member States" which included the "extension of the practice of recognizing periods of study abroad." Educational exchange, and the students who would be participating in it, would be the conduits for executing these objectives. Additionally, to further the "European dimension" to education, the Action Programme called for Member States to "promote and organize… educational activities with a European content." This can be interpreted as a means of broadening pedagogical orientation beyond solely national perspectives.

While the 1976 Action Programme was a clear advancement towards further cooperation in the realm of education, difficulties harkening back to the absence of a legal foundation in the Treaty of Rome persisted, immobilizing cooperation between 1978 and 1980.[630] Subsequently, there would be a shift in the 1980s regarding cooperation in education and "the matters discussed and the proposals made from then onwards focused much more on the links with the Union's economic and social objectives."[631] By tying in education to "official" objectives, it would be utilized to further the goals of the integration process. These initial years of the Action Programme showed it was possible

[625] Pépin 2006 op. cit. p. 23
[626] The Commission's "Education in the European Community," *Bulletin of the European Communities*, Supplement 3/74.
[627] Resolution of the ministers for education, meeting within the Council, of 6 June 1974 on cooperation in the field of education, OJ C 98 of 20.8.1974
[628] Resolution of the Council and of the Ministers of Education, meeting within the Council, of 9 February 1976 comprising an action programme in the field of education OJ C 38, 19.2.1976
[629] Beerkens 2005 op. cit. p.171
[630] Several Commission communications that addressed the "European dimension in secondary education; teaching of foreign languages; admission of students from other Member States to higher education; [and] equal opportunities in education and training for girls" were stymied during that time. (Pépin 2006 op. cit. p.24)
[631] Ibid. p.24

within EU integration to work together in areas essential to the Member States' functioning, while still taking into consideration and deferring to each individual State's circumstances and prerogatives.

3.4.4 Laying the Groundwork for Intra-EU Student Mobility

By the mid 1980s, a prominent concept entitled the "People's Europe" had become an important facet to cooperation endeavors. In a 1984 Communication of the Commission to the Council on A People's Europe: Implementing the conclusions of the Fontainebleau European Council,[632] the idea of a common European identity was highlighted: "The European Council considers it essential that the Community should respond to the expectations of the people of Europe by adopting measures to strengthen and promote its Identity and its image both for its citizens and for the rest of the world." As part of the new proposals for a People's Europe, point 6.2. of the Communication addressed the mobility of students, researchers and university teachers, acknowledging the need for "recognition of diplomas and periods of university study and the practical conditions for greater mobility at university level." It called for more comprehensive initiatives that would add "momentum to the mobility of students within the Community," but would require "very great practical and financial support" mechanisms to be properly developed.

The latter part of the 1980s would see "further initiatives" in education cooperation continue to materialize in the "European domain," which included "COMETT (to promote cooperation between higher education and industry), LINGUA (improvement of foreign language competence) and TEMPUS (focussed on the development of higher education systems in Central and Eastern Europe)."[633] Additionally, this 1985-1992 period, just prior to the passage of the Treaty of Maastricht, would prove crucial for the development of significant programs as well as the move towards a legal foundation for education in the treaty. Specifically, in 1985, with the concept of a People's Europe and the Single European Act "on the political agenda," as well as the Court of Justice incorporating higher education "in the treaty's sphere of application," the "adoption of Community programmes whose scope and nature offered much greater possibilities than the 1976 resolution"[634] were on the horizon.

The seminal case regarding including higher education in the Treaty's scope of application was Gravier v City of Liège,[635] in which a French national enrolled in a course of study in Belgium was charged a foreign student enrollment fee. Essentially, through its "broad interpretation of the treaty, the Court of Justice brought higher education within the scope of the treaty in 1985 (Article 128 on vocational training) and allowed the Commission to table legal acts with greater scope in these areas."[636] Article 128[637] of the EEC states, "on a proposal from the Commission and after consulting the Economic and

[632] COM/1984/0446 Final
[633] Beerkens 2005 op. cit. p.171
[634] Pépin 2006 op. cit. p.17
[635] C-293/83
[636] Pépin 2006 op. cit. p.26
[637] From the text in its original form (only available in German, French, Italian and Dutch) Article 128 states: "Su proposta della Commissione e previa consultazione del Comitato economico e sociale, il Consiglio fissa i principi generali per l'attuazione di una politica comune di formazione professionale che possa contribuire allo sviluppo armonioso sia del economie nazionali sia del mercato comune."

Social Committee, the Council lays down the general principles for the implementation of a common vocational training policy that can contribute to harmonious development both of national economies and of the common market." The Court found that under Article 128, "any form of education which prepares for a qualification for a particular profession, trade or employment or which provides the necessary training and skills for such a profession, trade or employment is vocational training, whatever the age and the level of training of the pupils or students, and even if the training program includes an element of general training."[638] [639] Thus, it would go against "the provisions of the Treaty to charge a fee which was not payable by Belgian nationals."[640] The findings in Gravier served to fill "a gap in the jurisprudence on education"[641] and lay the groundwork for important program initiatives to come.

In this vein, the White Paper[642] "that would lead to the Single European Act," published that same year made "a clear reference to the Commission's wish to extend activity in higher education cooperation."[643] Part Two, Section III point 94 addresses student mobility, stating that "the Commission intends to increase its support for cooperation programs between further education establishments in different Member States with a view to promoting the mobility of students… and helping young people, in whose hands the future of the Community's economy lies, to think in European terms."[644] It is here that the role of the international student as a crucial tool within the process of integration, essentially as a conduit for strengthening multilateralism is directly articulated.

While the preceding White Paper discussed student mobility, the Single European Act[645] did not directly address the same. Title VI on research and technological development did however discuss "the Community's aim" to "strengthen the scientific and technological basis of European industry and to encourage it to become more competitive at the international level." Article 130g elaborates that to "pursue such objectives" the Community must engage in "promoting co-operation with research centres and universities" as well as with third countries, and the "stimulation of the training and

[638] 293/83[1985] ECR 593, p.614
[639] Field 1998 op. cit. p. 36
[640] Ibid. p.36
[641] Corbett 2005 op. cit. p.124
[642] Completing the Internal Market: White Paper from the Commission to the European Council (Milan, 28-29 June 1985) COM(85) 310 Final
[643] Corbett, A. (2007). How to understand EU HE policy processes: Generalisations from a case study of EU higher education policy 1955-87. From: Defining the European Education Agenda - Faculty of Education and Pembroke College, Cambridge University Conference January 11, 2007 (Draft version). p.12.
[644] Point 94 of Section III Free Movement for Labour and the Professions: A New Initiative in Favor of Community Citizens stipulates, "Finally, measures to ensure the free movement of individuals must not be restricted to the workforce only. Consequently, the Commission intends to increase its support for cooperation programs between further education establishments in different Member States with a view to promoting the mobility of students, facilitating the academic recognition of degrees and thus diplomas, and helping young people, in whose hands the future of the Community's economy lies, to think in European terms. At the end of this year, it will make new proposals on this subject, notably concerning a Community scholarship scheme of grants for students wishing to pursue part of their studies or the acquisition of relevant professional experience in another Member State." The proposals for "promoting student mobility and cooperation between further education establishments in different Member States" were indicated for the 1985-1986 period.
[645] Signed in 1986, entry into force in 1987.

mobility of researchers in the Community." Even though students were not expressly included, the momentum of transnational mobility for educational purposes (albeit research purposes for now) was clearly growing.

During this period, other actors had a hand in what would eventually materialize into the intra-EU student exchange initiative Erasmus. The Italian educator and scholar, Sofia Corradi, for example, was a seminal figure in the development of intra-European student mobility. Motivated by a deep belief in "the educational value of study abroad," Corradi "spent more than two decades pushing for change within the university system and in public opinion generally" with the goal to "promote a 'culture of student mobility'" and "played a significant role in extensive conversations" that ultimately launched the Erasmus program.[646] She had been "publishing on the significance of studying abroad" as early as 1963 and was "particularly interested in the effect of the student's encounter with a foreign culture."[647] Meaning, from this experience a student would have the opportunity to reflect on his or her own beliefs or worldview, and consider it in a wider context of other cultures and experiences. This confirms the idea that it is the individual, the international student, who is both implementer and beneficiary in the exercise of international relations, and that the individual actor represents a fundamental part of EU cultural diplomacy within transnational education.

Moreover, in the tradition of prior student organizations in Europe, other individuals and groups also influenced the launching of the Erasmus exchange program. In 1985 the student organization AEGEE (originally called EGEE) held its first conference in Paris. Franck Biancheri,[648] its founder, organized the conference with the aim of "developing the process of European integration," hosting "500 students from Paris, Leiden, London, Madrid, Milan and Munich."[649] Later, in 1987, AEGEE would "incline" French President Francois Mitterrand to endorse the Erasmus program. The organization is still functioning, and still with the objective of "provid[ing] intercultural communication among young people and strengthen respect for people of different cultures."[650] The influence of these international students as key actors in reinforcing the goals of multilateralism can be argued as within the realm of cultural diplomacy. Simply put, if cultural diplomacy can be understood as a "practice that operates in the name of a clearly defined ethos,"[651] the same can be applied to the multilateral objectives of an increasingly more "clearly defined ethos" of a supranational entity (the EU)— with the students as a means for implementation.

The momentum of these various measures and proponents would lead to the approval in December of 1985 of the Erasmus draft decision, and "this programming approach,

[646] Nørgaard, T. (2014). Liberal education in the Erasmus programme. *Internationalisation of higher education and global mobility*. p.100.
[647] Ibid. p.100
[648] Biancheri would later launch the political party Newropeans, "the first trans-European policy movement which ran candidates in all European Union countries for elections to the European Parliament" in 2006. [Roy, S., Cooper, D., & Murphy, B. (Eds.). (2013). *Transatlantic relations and modern diplomacy: an interdisciplinary examination*. Routledge. p.xi.]
[649] AEGEE. (2019). Our History. Retrieved from https://aegee-samara.ru/en/our-history/. Accessed September 21, 2019.
[650] Ibid. (no pagination)
[651] Ang et al. 2015 op. cit. p.367

together with far greater funding than previously allocated to education…marked a major turning point in Community action."[652] However, the eventual launch of the Erasmus Programme in 1987, the first major Community initiative on student mobility, was not without its challenges.

3.4.5 Erasmus Exchange and the Treaty on European Union

In its early stages of development, the Erasmus Programme initiative continued to face complications regarding its legal basis in the treaty as well as the funds that it would be allotted. Eventually there was consensus, however, that Article 128 had been "interpreted by the European Court of Justice with the Gravier ruling in a way that made the Commission believe that it was sufficient for the implementation of Erasmus."[653] Even though the Commission initially "withdrew its proposal at the end of 1986, as the main part of it (student mobility) had been removed during the discussions in the Council," it was followed by "eighteen months of tough negotiations"[654] and an agreement was ultimately reached. Council Decision of 15 June 1987 [655] adopting the European Community Action Scheme for the Mobility of University Students (ERASMUS) (87/327/EEC) was passed.

The Council decision highlights, first in the recitals and later in the objectives, the fact that the "further development of the Community depends to a large extent on its being able to draw on a large number of graduates who have had direct experience of studying and living in another Member State." Essentially, the goal of integration is inherently linked to the transnational, cross-cultural (study) experience of its citizens. This is further elaborated on in Article 2, which establishes the objectives of the Erasmus programme, the first aim being "(i) to achieve a significant increase in the number of students from universities…spending an integrated period of study in another Member State, in order that the Community may draw upon an adequate pool of manpower with first hand experience of economic and social aspects of other Member States." The Council decision also aimed to pursue broader and more developed cooperation measures, and sought to both "(iv) strengthen the interaction between citizens in different Member States with a view to consolidating the concept of a People's Europe," and to "(v) ensure the development of a pool of graduates with direct experience of intra-Community cooperation, thereby creating the basis upon which intensified cooperation in the economic and social sectors can develop at Community level." The decision worked to solidify the idea that the individual student would be an essential tool, a necessary conduit, for further achieving the economic and social goals of integration.

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[652] Pépin 2006 op. cit. p.17

[653] Feyen, B. (2013). The making of a success story: The creation of the ERASMUS Programme in the Historical context. In *The ERASMUS Phenomenon–Symbol of a New European Generation*. Feyen, B. & Krzaklewska, E (Eds.) p.29.

[654] Pépin 2006 op. cit. p.26

[655] Three principal action areas were outlined in the Council Decision: first, the "establishment and operation of a European university network;" then, an "ERASMUS student grants scheme… for the direct financial support of students at universities;" and finally, "measures to promote mobility through the academic recognition of diplomas and periods of study." "Complementary measures to promote student mobility in the Community" were also included as a fourth, albeit notably less concrete, action area.

The Erasmus programme was implemented beginning in July of 1987, and while it may have initially faced legal and financial setbacks, the Programme was successful from its onset, illustrating its importance and the shared interest in educational exchange at the European level. A central feature of Erasmus, as well as other programs in the sphere of educational cooperation launched during this period was that they were "implemented at the closest possible level to the education… players on the ground and were effective catalysts and multipliers of the European dimension in education and training,"[656] subsequently being looked to as a reference of what the EU could represent for its citizens. While the Programme was later renewed for the 1990-1994 period with a larger budget, the Erasmus Programme was initially "not limited in time" since the Council decision of 1987 "did not stipulate how long the programme would run… [and] it was therefore possible to assume that the programme was ongoing."[657] Ultimately, this first intra-EU student exchange initiative served as a fundamental starting point for the launch of other programs and policies (to be discussed later on) that had a hand in furthering the goals of regional integration in Europe—all reliant on the internationally mobile student for their execution.

Another key advancement in this timeline comes by way of the Treaty of Maastricht (1992), with the inclusion of education in the Treaty. Chapter 3 of the TEU discusses education, vocational training and youth, and "considerably [extended] EU competences to act in developing a European dimension in education."[658] Additionally, the Treaty proved to be a significant development in the field of foreign policy through its introduction of the Common Foreign and Security Policy (CFSP)[659] as Pillar II of the EU. "Not until the negotiations for the Maastricht Treaty… did a more coherent approach to European foreign policy emerge."[660] Regional integration measures were progressing, and the CFSP was "a major step" for the EU in that the moment "had come for the European Union to mature beyond economic cooperation between Member States and seek to take its place in the post-Cold War international environment alongside the only remaining superpower, the United States."[661] While cooperation in education had been contributing to internal EU integration measures, this consolidation of a common foreign policy would later be echoed in external initiatives for student mobility.

Article 126[662] of the TEU stipulates that "the Community shall contribute to the development of quality education by encouraging cooperation between Member States

[656] Pépin 2006 op. cit. p.26
[657] Ibid. p.118
[658] Brock & Tulasiewicz 2000 op. cit. p.23
[659] The CFSP was established by Title V Articles J through J.11 of the Treaty on European Union (TEU), signed in 1992 and entered into force in 1993.
[660] Staab 2011 op. cit. p.131
[661] Cardwell, P. J. (2009). *EU external relations and systems of governance: the CFSP, Euro-Mediterranean partnership and migration*. Routledge. p.1.
[662] Article 126 states, "1. The Community shall contribute to the development of quality education by encouraging cooperation between Member States and, if necessary, by supporting and supplementing their action, while fully respecting the responsibility of the Member States for the content of teaching and the organization of education systems and their cultural and linguistic diversity. 2. Community action shall be aimed at:
- developing the European dimension in education, particularly through the teaching and dissemination of the languages of the Member States;

and, if necessary, by supporting and supplementing their action," however "the content of teaching and the organization of education systems" remains the "responsibility of the Member States." Importantly, it states that action should be geared towards "encouraging mobility of students and teachers," "youth exchanges and exchanges of socio-educational instructors," and "promoting cooperation between educational establishments." This codifies the essential role of transnational study in furthering the goals of multilateralism in EU integration.

Article 128[663] goes on to address culture, "encouraging cooperation between Member States" and "if necessary" through "supporting and supplementing their action" in several areas including "non-commercial cultural exchanges." Additionally, "the Community and the Member States shall foster cooperation with third countries and the competent international organizations in the sphere of culture, in particular the Council of Europe." This foreshadows what is to come, as the EU will later turn its attention outward, with the aim of broadening cultural and educational exchange programs to third countries.[664]

- encouraging mobility of students and teachers, inter alia by encouraging the academic recognition of diplomas and periods of study;
- promoting cooperation between educational establishments;
- developing exchanges of information and experience on issues common to the education systems of the Member States;
- encouraging the development of youth exchanges and of exchanges of socio-educational instructors ;
- encouraging the development of distance education.

3. The Community and the Member States shall foster cooperation with third countries and the competent international organizations in the field of education, in particular the Council of Europe.

4. In order to contribute to the achievement of the objectives referred to in this Article, the Council:
- acting in accordance with the procedure referred to in Article 189b, after consulting the Economic and Social Committee and the Committee of the Regions, shall adopt incentive measures, excluding any harmonization of the laws and regulations of the Member States;
- acting by a qualified majority on a proposal from the commission, shall adopt recommendations.

[663] Article 128 states, "1. The Community shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore.

2. Action by the Community shall be aimed at encouraging cooperation between Member States and, if necessary, supporting and supplementing their action in the following areas:
- improvement of the knowledge and dissemination of the culture and history of the European peoples;
- conservation and safeguarding of cultural heritage of European significance;
- non-commercial cultural exchanges;
- artistic and literary creation, including in the audiovisual sector.

3. The Community and the Member States shall foster cooperation with third countries and the competent international organizations in the sphere of culture, in particular the Council of Europe.

4. The Community shall take cultural aspects into account in its action under other provisions of this Treaty.

5. In order to contribute to the achievement of the objectives referred to in this Article, the Council:
- acting in accordance with the procedure referred to in Article I89b and after consulting the Committee of the Regions, shall adopt incentive measures, excluding any harmonization of the laws and regulations of the Member States. The Council shall act unanimously throughout the procedures referred to in Article I89b;
- acting unanimously on a proposal from the Commission, shall adopt recommendations."

[664] Education and culture are among the issues with regional impact that fall under the Committee of the Regions (COR). The COR was "set up in the aftermath of Maastricht in order to facilitate the doctrine of subsidiarity," meeting for the first time in 1994, and "established as part of an attempt to bridge the gap between Brussels and citizens of the Union," however detractors felt that "its creation was part of a… plan to undermine the nation state." (Watts 2008 op. cit. p.93)

3.4.6. Derivatives from and the Evolution of the Erasmus Programme

During the latter half of the 90s, the Erasmus programme would become "part of the broader Socrates Programme,"[665] and concepts like the knowledge-based society and lifelong learning came to the forefront in the period leading up to the millennium.[666] The Commission decisively supported what would evolve into "a major focus of economic development and social cohesion," which was the emergence of the concepts of the knowledge-based society and economy," and even though "it was still very much theoretical, a new integrated framework for Community action in education… was beginning to form around these concepts."[667] It was the Lisbon European Council in 2000 where the Council laid out a "new EU economic and social strategy" for the subsequent years, with education at the heart, calling for "more integrated action," and the committed involvement of Member States to put into action the shared goals that had been formed and outlined on the European plane.[668]

Since the latter half of the 1980s, alongside the development of educational programs such as Erasmus, Member States' cooperation on policy continued to increase. In the realm of education, the commencement of the Lisbon Strategy in March 2000 was a notable step forward, since education "was considered a key factor in the implementation of the EU economic and social objectives set for 2010."[669] Thus, as a result of the Lisbon strategy, "another series of political actions emerged" towards the development of "a world class knowledge economy;" meaning, "Europe's economic and social aspirations predominate and… higher education has a crucial instrumental role to play."[670] In the March 2000 Conclusions,[671] the Council called upon the Member States, the Council and the Commission to "take the necessary steps within their areas of competence" to meet several targets, which included defining "the means for fostering the mobility of students, teachers and training and research staff both through making the best use of existing Community programmes…by removing obstacles and through greater transparency in the recognition of qualifications and periods of study and training..." This illustrates the continued importance placed on intra-EU student mobility, and the role of the individual student, within the framework of implementing EU economic and social objectives.

The Reform Treaty of 2007, also known as the Lisbon Treaty, entered into force in 2009 and the EC was replaced and succeeded by the EU. The Lisbon Treaty also ended the pillar system in the new TEU and Treaty on the Functioning of the European Union (TFEU). In addition, it introduced "a number of potentially far-reaching changes in EU external relations with the scope for the Union to become a more coherent actor on the international stage."[672] Importantly, "for the first time ever, a definition of the powers attributed to the EU is incorporated into the founding Treaties," differentiating between

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[665] Beerkens 2005 op. cit. p.172

[666] In November of 1995, the Commission adopted the White Paper *Teaching and learning: towards the learning society*, proving "a decisive step in this process." (Pépin 2006 op. cit. p.17)

[667] Pépin 2006 op. cit. p.18

[668] Ibid. p.18

[669] Pépin, L. (2007). The History of EU Cooperation in the Field of Education and Training: how lifelong learning became a strategic objective. *European Journal of Education*, *42*(1), 121-132.

[670] Corbett 2007 op. cit. p.3

[671] Presidency Conclusions Lisbon European Council 23 and 24 March 2000

[672] Duke, S. (2008). The Lisbon Treaty and External Relations. *Eipascope*, *2008* (1), p.1.

"three types of competence: exclusive, shared and supporting."[673] [674] As will be discussed later on, culture and education are policy areas in which the EU has supporting competences.

The significance of intra-EU student mobility, and the role of the individual student, in carrying out EU economic and social objectives is further solidified in the TFEU, which addresses educational exchange in Title XII, Article 165,[675] establishing that action should be focused towards "encouraging mobility of students and teachers," "promoting cooperation between educational establishments," and "encouraging the development of youth exchanges and of exchanges of socio-educational instructors," as well as "developing the European dimension in education"—similar to its predecessor the TEU. Additionally, the EU and Member States "shall foster cooperation with third countries." Of note is that while this should be achieved through the adoption of "incentive measures," such measures exclude "any harmonisation of the laws and regulations of the Member States." It is here that the promotion of cross-cultural exchange (student mobility) once again intersects with calls for an increased degree of integration, or "harmonisation," between Member States—highlighting the essential role of the internationally mobile student as an agent of multilateralism.

As discussed, while at first a stand-alone program, the fact that Erasmus was "incorporated into the *Socrates* programme (1995) and [later] the *Lifelong Learning* programme (2007)," implies that its success "led to—or at least immensely supported—the *Bologna Process*, [and] the establishment of the 'European Credit Transfer System'

[673] Article 2 TFEU

[674] Amann, C. U. (2015). *The EU Education Policy in the Post-Lisbon Era: A Comprehensive Approach (Völkerrecht, Europarecht und Internationales Wirtschaftsrecht)* New Edition. p.69

[675] Article 165 states, "1. The Union shall contribute to the development of quality education by encouraging cooperation between Member States and, if necessary, by supporting and supplementing their action, while fully respecting the responsibility of the Member States for the content of teaching and the organisation of education systems and their cultural and linguistic diversity...

2. Union action shall be aimed at:

- developing the European dimension in education, particularly through the teaching and dissemination of the languages of the Member States,
- encouraging mobility of students and teachers, by encouraging inter alia, the academic recognition of diplomas and periods of study,
- promoting cooperation between educational establishments,
- developing exchanges of information and experience on issues common to the education systems of the Member States,
- encouraging the development of youth exchanges and of exchanges of socio-educational instructors, and encouraging the participation of young people in democratic life in Europe,
- encouraging the development of distance education,
- developing the European dimension in sport, by promoting fairness and openness in sporting competitions and cooperation between bodies responsible for sports, and by protecting the physical and moral integrity of sportsmen and sportswomen, especially the youngest sportsmen and sportswomen.

3. The Union and the Member States shall foster cooperation with third countries and the competent international organisations in the field of education and sport, in particular the Council of Europe.

4. In order to contribute to the achievement of the objectives referred to in this Article:

- the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, after consulting the Economic and Social Committee and the Committee of the Regions, shall adopt incentive measures, excluding any harmonisation of the laws and regulations of the Member States,
- the Council, on a proposal from the Commission, shall adopt recommendations."

(ECTS)."[676] Since its inception, the original objectives of the Erasmus Programme have morphed to include the European response to the global internationalization of education, resulting in the creation of various education-focused initiatives, including the Bologna Process[677] as well as the creation of the European Higher Education Area (EHEA). Intra-EU student mobility has been actively "promoted by the European Commission" through its student exchange programs and "assisted by the Bologna Process."[678] First adopted in 1999, the Bologna Declaration is the principal guiding document of the Bologna Process, a series of agreements between European countries to establish shared higher education qualifications and standards.[679] The Lisbon Recognition Convention,[680] an important instrument of this process that occasioned the 2010 creation of the European Higher Education Area, aimed at ensuring compatible systems of higher education within Europe.

This was and continues to be seminal in developing intra-European measures for formal standardization within international education to facilitate cross-country recognition. Some of these measures include the EU Diploma Supplement, later adopted as part of this process to present study elements and degree achievements in an internationally accessible way.[681] Developed by the European Commission, Council of Europe and UNESCO, the Supplement also provides sufficient independent data for appropriate academic and professional recognition of qualifications. Another concept put forth was that of the standardization of length of study programs across Europe. Since that time there have been further developments in joint degrees as well as transnational higher education provisions.[682] Finally, a European credit transfer system (ECTS) has also been implemented in order to streamline international study recognition.

Student exchanges between European Union Member States have facilitated a "movement towards greater European unity."[683] In addition to this, the Programme has influenced intra-EU student mobility tendencies: contrary to international study patterns in much of world, "the movement of students within Europe tends to be for relatively short periods of time and is stimulated strongly by regional policy, made by the European Union."[684] Since its launch, the Programme has had several iterations with its most recent

[676] Feyen, B. & Krzaklewska, E. (2013). The ERASMUS Programme and the 'Generation ERASMUS' – A Short Overview. In *The ERASMUS Phenomenon–Symbol of a New European Generation*. Feyen, B. & Krzaklewska, E. (Eds.) p.10.
[677] The process was "initiated with the Bologna Declaration (1999) and assessed every 3 years in ministerial conferences, aims to introduce a more comparable, compatible and coherent system for European higher education." [EUR-Lex Summaries of EU Legislation. (2015). The Bologna process: setting up the European higher education area. Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=legissum:c11088. Accessed August 20, 2019.]
[678] Weibl 2014 op. cit. p.37
[679] The Bologna Process currently includes 48 participating countries and is thought to be one of the most ambitious ventures in the realm of higher education. [Adelman, C. (2008). The Bologna Club: What US Higher Education Can Learn from a Decade of European Reconstruction. *Institute for Higher Education Policy*. p. v, 102.]
[680] Titled the Convention on the Recognition of Qualifications concerning Higher Education in the European Region; signed on 11 April 1997 and entered into force 1 February 1999.
[681] Teichler 2004b op. cit. p. 16
[682] European Commission, Education and Training. (2018). *Outline Structure for the Diploma Supplement*. http://ec.europa.eu/dgs/education_culture/repository/education/policy/higher-education/doc/ds_en.pdf.
[683] Brock & Tulasiewicz 2000 op. cit. p.ix
[684] Brooks & Waters 2011 op. cit. p.69

being Erasmus+[685] as the Commission's program for education, training, youth, and sport for the period 2014–2020.

3.4.7 Internal and External Dimensions to EU Culture and Education Policy

While the previous sections detailed the significant strides made in the way of EU integration, if cooperation in education is used as a gauge, the interaction between the national and supranational level remains fraught. As discussed in the first half of the chapter, in the post-WWII period, an American ethos was developed and propagated to the rest of the world in an effort to "define" America, and project an image. While that image has experienced different iterations through the subsequent political and social changes since that time, there remains a generally cohesive idea of the US abroad. In contrast, the EU is based on the cultural plurality and diversity of its Member States as one of its main principles (Article 5 TEU), although as the preamble declares, the States share a "cultural, religious and humanist inheritance of Europe." Recognizing this dichotomy, the individual countries and cultures of the European integration process do not necessarily represent a collective cultural identity.[686]

From a political-legal perspective, there is a uniqueness to the European identity: EU citizens are both nationals of a particular state, but also European. EU citizenship is singular, a legal status that goes beyond national citizenship[687]—but citizenship and identity are not perfectly aligned. Collective identities "are socially constructed"[688] [689] and it is understood that "people can hold multiple collective identities." [690] "Self-categorization is not necessarily exclusive; one can consider oneself as European in addition to being a member of a national community."[691] At the same time, if collective identities are socially constructed, they can thus be socially engineered to some degree, which, as we will see, the EU has made use of in its efforts to promote a supranational identity. These are key considerations moving forward.

In the scenario of individuals self-identifying on multiple planes, however, the concept itself becomes fraught. There is an uneasy coexistence, a sometimes competing sometimes shared exertion of influence, between Europe and its values, and national loyalties, which may be hard to reconcile. Internally within Europe, this brings up different types of considerations for the individual actor within intra-EU mobility.

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[685] Regulation (EU) No 1288/2013 of the European Parliament and of the Council of 11 December 2013 establishing 'Erasmus+'; Latest consolidated version: 05/10/2018

[686] However, the 2019 von der Leyen Commission's Agenda for Europe reiterated the idea of a common cultural heritage in its Political Guidelines that "draw on the common ideas and priorities that unite us," most notably, "protecting our European way of life." [von der Leyen, U. (2019). A Union that strives for more: My agenda for Europe, Political guidelines for the Next European Commission 2019-2024. Retrieved from https://ec.europa.eu/commission/sites/betapolitical/files/political-guidelines-next-commission_en.pdf. Accessed December 12, 2019.] Thus, this duality remains.

[687] Worster, W. T. (2018). Brexit and the International Law Prohibitions on the Loss of EU Citizenship. *International Organizations Law Review*, *15*(2), 341-363.

[688] Kuhn, T. (2012). Why educational exchange programmes miss their mark: Cross-border mobility, education and European identity. *JCMS: Journal of Common Market Studies*, *50*(6). p.995.

[689] Risse, T. (2010) *A Community of Europeans? Transnational Identities and Public Spheres* (Ithaca, NY: Cornell University Press). p.9, p.19-25.

[690] Kuhn 2012 op. cit. p.995

[691] Ibid. p.996

Moreover, in the realm of external international relations, the strategic aims of "brand Europe" might not align with the individual student, a dynamic that the following sections endeavor to examine.

3.4.7.1 Intra-EU Study and European Identity Considerations

Higher education can work to "serve the administrative and economic interests of… nation-states, becoming essential in the development of national identity."[692] To this end, the role of cross-border mobility has been seen as fundamental in the formation of a common European identity among the different EU nations.[693] Accordingly, this section seeks to address the complexities of a common European identity as it relates to international study and cultural diplomacy by first examining how education and culture are treated in current EU policy. Subsequently, the interaction between such policy objectives and economic drivers within the context of student mobility will be addressed.

3.4.7.1.1 Education and Culture: Interconnected Supporting Competences

The European Commission has described public diplomacy as that which "deals with the influence of public attitudes… It means clearly explaining the EU's goals, policies and activities and fostering understanding of these goals through dialogue with individual citizens, groups, institutions and the media."[694] As such, the "internal aspects" of EU public diplomacy are "very much part of the construction of the identity and narratives that are employed externally,"[695] as can be seen in the promotion of intra-EU educational exchange to foster an identity that goes beyond the national sense. Additionally, as discussed in the previous sections, the power balance "between the national and supranational level in the EU"[696] is an ever-present consideration. In this regard, culture and education are policy areas in which the EU has supporting competences, "to support, coordinate or supplement the actions of the Member States," as outlined by Article 6 of the TFEU.[697] The consequences of the fact that the EU only has supporting competences in education and culture are that its capacity for action is fundamentally limited, first by the adoption of mostly non-binding and programmatic acts in this area, and second, by the simultaneity of actions within intergovernmental frameworks that have the participation of other international organizations with competences on the subject, such as the Council of Europe or UNESCO.

As discussed in the previous sections, the inherent interconnectedness of cooperation in education and culture between the Member States can be seen throughout the integration process. This cannot be over emphasized. Some notable examples include

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[692] De Wit 1999 op. cit. p.2

[693] Fligstein, N. (2008). *Euroclash: The EU, European identity, and the future of Europe*. Oxford University Press. p.139

[694] According to a pamphlet published as part of the EU's 50th anniversary celebration. [European Commission. (2007). *A glance at EU public diplomacy at work, The EU's 50th anniversary celebrations around the world*. Luxembourg: Office for Official Publications of the European Communities, p.12.]

[695] Duke, S. (2013a). The European external action service and public diplomacy. In *European Public Diplomacy* (pp. 113-136). Davis Cross, M. K. & Melissen, J. (Eds.) Palgrave Macmillan, New York. p.114

[696] Weinar 2011 op. cit. p.1

[697] Article 6 states, "The Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States. The areas of such action shall, at European level, be: (a) protection and improvement of human health; (b) industry; (c) culture; (d) tourism; (e) education, vocational training, youth and sport; (f) civil protection; (g) administrative cooperation."

through the Hague Summit, initiatives like the People's Europe, which underscored the role of education and culture, as well as the fact that culture was also included for the first time alongside education in the Treaty of Maastricht. More recently, cultural heritage policies geared towards Europe's "shared, diverse heritage" fall under the same umbrella as education within the European Commission's Directorate General for Education, Youth, Sport and Culture.[698] The department's activities are framed by the European Agenda for Culture.

The Council Resolution of 16 November 2007[699] on a European Agenda for Culture's strategic objectives included the "promotion of cultural diversity and intercultural dialogue and the "promotion of culture as a vital element in the Union's international relations." Elaborating further, the Resolution's "specific objectives" include "promoting intercultural dialogue as a sustainable process contributing to European identity, citizenship and social cohesion, including by the development of the intercultural competences of citizens." It is here that one can connect educational exchange that promotes "intercultural dialogue" and experiences, with the advancement of a European identity.

The New European Agenda for Culture from 2018[700] "aims to raise awareness of Europe's shared, diverse heritage,"[701] through culture and education, so as "to build cohesive societies and offer a vision of an attractive European Union." The Agenda, "backed with appropriate funding," will work to "exploit synergies between culture and education and strengthen links between culture and other policy areas."[702] This latest initiative evinces continued recognition of the interconnectedness of education and culture, and thus the importance of the role of the international student within EU cultural diplomacy.

3.4.7.1.2 Cross-border Mobility and the European Identity: Unresolved Contradictions

The EU's support of student mobility and engagement in the internationalization of higher education through Erasmus programs and the Bologna Process can be contextualized by the concept of *Europeanization*.[703] This can be understood as the process of the "a) construction, b) diffusion and c) institutionalisation of formal and informal rules, procedures, policy paradigms, styles, 'ways of doing things' and shared beliefs and norms." They are first "defined and consolidated in EU policy" procedures and then "incorporated in the logic of domestic (national and subnational) discourse, political structures and public policies."[704] This connects to and fosters the concept of a transnational European identity.

[698] It handles education and culture, as well as training, youth, sport, and languages.
[699] OJ C 287, 29.11.2007
[700] COM (2018) 267
[701] European Union External Action. (2019). EU adopts strategic approach to international cultural relations. Retrieved from https://eeas.europa.eu/headquarters/headquarters-homepage/60750/eu-adopts-strategic-approach-international-cultural-relations_en. Accessed August 5, 2019.
[702] International study and exchanges are not directly addressed.
[703] Radaelli, C. (2000). Whither Europeanization? Concept Stretching and Substantive Change. European Integration online Papers (EIoP), Vol. 4, No. 8. p.4.
[704] Ibid. p.4

In this vein, scholars and policymakers have highlighted a link between intra-EU student mobility and the dissemination of the concept of a European identity. It is argued that such mobility is part of a wider aim to promote a unified European identity as one way of further integrating the countries of Europe.[705] In this sphere, students are thought of as key players in the trajectory of this project.

European students are seen as the next generation, individuals that can learn from cross-cultural interaction and assist in the development of an integrated Europe.[706] Within the framework of European programs, there are several overarching themes connected to internationalization, including institutional "knowledge transfer, international education, and research," as well as "border-crossing discourse."[707] The latter concept links to the development of a common European identity. Since mobility within Europe, as opposed to external mobility, is distinct in that it represents movement between not-too-distant cultures "destructive culture shocks are less likely than anywhere else, and rapid insight in the international diversity, as well as learning based on that insight, are more likely to be achieved."[708] Through Erasmus student exchange programs, and the academic interaction and shared experiences that ensue, Europeans would become "aware of their commonalities and a supranational identity" would evolve.[709]

Still, the effectiveness of intra-EU study abroad in promoting a unified identity has not been an unqualified success. Alternative research literature indicates that "participating in an Erasmus exchange" won't necessarily deepen feelings of "European identity," as "university students who are already likely to feel European" are those who tend to participate in such programs in the first place.[710] On the contrary, "low-educated individuals who might respond strongly to cross-border mobility by adopting a European identity hardly participate in educational exchange because they leave school before these programmes take place."[711] Additionally, an extensive case study originally published in 2003[712] looked at intra-EU student mobility experiences. The study found that even in the realm of intra-EU international study the "experience of studying abroad is not always a solely pleasant one for most students, but an ambiguous experience at best" that it is largely a function of "the openness of native students' to foreign students" which is "not always present and many exchange students stay within the circle of the international student body."[713]

Despite the contradictory nature of these findings (which may be due to the diversity in individual experiences), it may still be possible to argue that the focus of Erasmus has served a purpose in strengthening feelings of European identity.

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[705] Sigalas 2010 op. cit. p.242
[706] King & Raghuram 2013 op. cit. p.6
[707] Teichler 2004b op. cit. p.13-14
[708] Ibid. p.14
[709] Kuhn 2012 op. cit. p.994
[710] Ibid. p.1006
[711] Ibid. p.1006
[712] See Murphy-Lejeune, E. (2003). Student mobility and narrative in Europe: The new strangers. Routledge.
[713] Schans, D. (2005). European student travelers: modern strangers or migratory elite? Review of *Student mobility and narrative in Europe: the new strangers*. Focaal Journal of Global and Historical Anthropology, 2005(46). p. 180–181.

3.4.7.1.3 The "Economic Potential" of the EU as it relates to Culture and Education Policy

The interconnectedness of EU policy initiatives in education and culture with economic objectives must also be considered. It is argued that longstanding initiatives in the realm of education such as the Bologna Process have been economic in motivation. The Bologna Declaration called for "the integration of all the national systems of higher education in the EU into one European educational system with the major aim of increasing its 'international competitiveness.'" [714] Similarly, aside from promoting intercultural dialogue and international relations, the Council Resolution of 16 November 2007 on a European Agenda for Culture's strategic objectives also include the "promotion of culture as a catalyst for… growth, employment, innovation and competitiveness." The EU's ability to compete globally in terms of ISM, for example, directly correlates to financial objectives linked to higher education and international study.[715]

In this vein, EU policy has continued to fuse goals of social cohesion with that of economic growth. The Communication Towards an integrated approach to cultural heritage for Europe,[716] for example, affirms the fact that "Europe's cultural heritage…is an irreplaceable repository of knowledge and a valuable resource for economic growth, employment and social cohesion." Despite the apparent focus on heritage, the stated objectives of the Communication are two-fold: promoting both "social cohesion" as well as "economic growth." In an effort to make "greater use of the economic potential of EU cultural heritage**,**" the Erasmus+ program will "provide increased opportunities for learning mobility and tackle skills gaps by supporting transnational partnerships between businesses, higher education and vocational education and training institutions"[717] so as to better connect education to labor market objectives.

More recently, the Europe 2020 strategy**,** the EU's "agenda for growth and jobs," echoes the importance of "strengthening European identity and cohesiveness,"[718] but with the direct aim of achieving economic objectives. This complicates the motivations for facilitating a common European identity. The ways in which international education and economic objectives collide (but more specifically, how ISM is used as an instrument of higher education economy) will be further discussed in the final chapter.

3.4.7.2 The External Dimension: the International Student and Harmonization Issues

Even though the EU is an international organization formed by plural European states with policies that have an internal dimension, these States also function on the

[714] Lorenz, C. F. (2006). Will the Universities Survive the European Integration? Higher Education Policies in the EU and in the Netherlands before and after the Bologna Declaration. Sociologia internationalis, 44(4). p.126.
[715] See Chapter 4, Section 4.3.2
[716] COM(2014) 477 final
[717] Additionally, "Knowledge Alliances (for higher education institutions) and Sector Skills Alliances (for vocational education and training) can help design and deliver curricula that meet the new needs of different sectors and better link them with the labour market. The cultural heritage sector is well placed to take advantage of these initiatives."
[718] McGrath, C. & Frearson, M. (2016). Admission Systems and Student Mobility: A Proposal for an EU-Wide Registry for University Admission. *Foro de Educación, Vol 14, Iss 21, Pp 167-195 (2016)*, (21). p.168.

international plane through individual external action. Over time, however, "the level of ambition to speak with 'one voice' in foreign affairs has steadily increased," and the TEU "clearly stipulated that the Union's Common Foreign and Security Policy should aim to assert the EU's identity on the international stage."[719] Thus, the complexity of external action comes from the point of view of its functioning (either intergovernmental or supranational) due to this distinction between external relations on the part of the States and, for example, the CFSP.

That said, although there has been frequent change to the guiding "structures and processes over time, the aims and objectives of EU external relations have remained broadly constant" in its "dealings with third parties," focusing consistently on "a commitment to multilateralism as the lynchpin of EU strategy."[720] Meaning, the cooperation of the Member States in pursuing common objectives is essential to EU external international relations. "The multilateral approach is thus not only compatible with the advance of interregionalism, it also forms part of the wider flexibility that the EU has retained to develop different strategies for different needs. Not only is interregionalism consistent with the EU's multilateral commitments, it is also consistent with the EU's regional basis and ambitions."[721] [722] While this argument specifically refers to region-to-region relations, the same can be understood in the EU's interactions with third countries.

After looking at issues concerned with internal EU policy in culture and education as it relates to student mobility, this section will discuss aspects of external European cultural diplomacy with regard to international study. The first part deals with recent initiatives to promote and enhance instances of cross-cultural diplomacy, with a focus on educational exchanges with third-country nationals. Culture is seen as being at the center of these efforts to increase ISM. Also considered is the recent rise of xenophobia and nationalism in several State members. The second part deals with a major problem facing these efforts: the lack of harmonization between EU Member States. Despite the efforts to promote a "brand Europe," the idea has never gained much currency inside or outside of Europe. Individual Member States tend to focus on their own goals and objectives, rather than on European-level aims. The differences that Member States display in immigration policy is cited as an example.

3.4.7.2.1 The Centrality of International Study in EU Cultural Policy

It has been argued that the EU's "external activities to promote international cooperation in education and training are seen as an essential part of its international policies and are judged [to be] increasingly important by policy-makers."[723] [724] The same

[719] Aggestam, L. (2004). Role identity and the Europeanisation of foreign policy: a political–cultural approach. In *Rethinking European Union Foreign Policy*. Tonra, B., & Christiansen, T. (Eds.) p.81

[720] Hardacre, A., & Smith, M. (2009). The EU and the diplomacy of complex interregionalism. *The Hague Journal of Diplomacy*, *4*(2). p.172.

[721] Hardacre & Smith 2009 op. cit. p.172

[722] Hardacre and Smith (2009) discuss the concept of "complex interregionalism" in terms of "relations between regional groupings in different world regions" with and the EU "central to the development of this new interregional occurrence." Ibid. p.167

[723] Corbett, A. (2011). Ping Pong: competing leadership for reform in EU higher education 1998–2006. *European Journal of education*, *46*(1). p.39.

might be said for EU objectives regarding culture. Demonstrative of the continued interconnection of culture and education, the EU has asserted its commitment to a promotion of culture in its international relations and has demonstrated such through its ratification of the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, the principal legislation in this arena. The Convention affirms "the fundamental role that education plays in the protection and promotion of cultural expressions" specifically through article 10 (c), addressing education and public awareness. Parties should "encourage creativity and strengthen production capacities by setting up educational, training and exchange programmes in the field of cultural industries." If education plays a fundamental role in the promotion of culture in EU external relations, specifically through exchange programmes, the international student is thus a means of promoting EU cultural objectives abroad.

In this vein, "promoting culture as a vital element in EU international relations has been one of the three main objectives of the European Agenda for Culture since 2007."[725] Since that time, EU Member States and the European Parliament have attempted a more multidimensional approach to the EU's external cultural relations**.** This included the 2008 Council Conclusions on cultural diversity and intercultural dialogue in EU external relations, as well as the 2015 Council Conclusions on culture in the EU's external relations with a focus on culture in development cooperation.[726]

While neither of the prior strategic approaches specifically addressed student mobility, education in the broad sense has been a focus. Indeed, the European Parliament's 2011 Resolution[727] on the cultural dimensions of the EU external action, and its Preparatory Action in this field, directly discussed educational exchange, cultural diplomacy, and student mobility. In regards to EU programs, the Parliament stated that "educational exchanges can potentially strengthen civil society," "provide building blocks for lasting cooperation," as well as facilitate strategies for third-country national student mobility within the EU.[728] The promotion of ISM, together with the role of the international student as an element of EU external action in culture, is evident here.

In June of 2016, the Commission adopted a new strategy that centers on culture as the core of EU international relations. The principal goals of this initiative are utilizing culture for "sustainable social and economic development," the promotion of peace through

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[724] Policy-makers have turned their attention to "neighbouring countries and others in their modernising efforts through policy initiatives," focusing on "discussions and programmes such as Tempus and Erasmus Mundus." (Ibid. p.39)

[725] European Commission. (2017). International cooperation. Retrieved from https://ec.europa.eu/culture/policy/international-cooperation_en. Accessed January 2, 2019.

[726] Ibid. (no pagination)

[727] OJ C 377E, 7.12.2012

[728] "11. States that cultural and educational exchanges can potentially strengthen civil society, foster democratisation and good governance, encourage the development of skills, promote human rights and fundamental freedoms and provide building blocks for lasting cooperation; 12. Supports the increasing involvement of third countries in EU cultural, mobility, youth, education and training programmes, and calls for access to these programmes to be facilitated for (young) people from third countries, such as European neighbouring countries; [and] 13. Calls for coherent strategies to foster youth mobility and the mobility of cultural professionals…" [European Parliament. (2011). European Parliament resolution of 12 May 2011 on the cultural dimensions of the EU's external actions (2010/2161(INI)) OJ C 377E , 7.12.2012]

"intercultural interaction," and strengthening cooperation in terms of cultural heritage.[729] This "new EU cultural policy" was put forth by the 2016 Joint Communication to the European Parliament and the Council Towards an EU strategy in international cultural relations.[730] Under the "guiding principles for EU action," a "cross-cutting approach to culture" was encouraged, explaining that culture "spans a wide range of policies and activities," including "inter-cultural dialogue" and education. The Communication proposed a strategy that would facilitate opportunities to "promote culture within the EU's external policies."[731] This once again reinforces the interconnection of culture and education and how international study is crucial to this process.

The strategy in part relies on "promoting culture through existing frameworks for cooperation" which include "thematic programmes" such as "Partnership Instrument (PI)."[732] PI seeks to strengthen "widespread understanding and visibility of the Union… by means of public diplomacy, people-to-people contacts, [and] cooperation in educational and academic matters [among other areas, in order] to promote the Union's values and interests."[733] Naturally it is the international student who acts as a conveyor of this strategy by these means.

The Communication's "Strategic EU Approach to Cultural Diplomacy" further develops the dimensions of international study. Under "Enhanced EU Cooperation Establishing European Culture Houses" stakeholders (the EU and partner countries) would "come together and provide services to the local population, engage in joint projects and offer scholarships, cultural and educational exchanges." Additionally, "inter-cultural exchanges of students, researchers and alumni" is directly addressed: "the EU's mobility and inter-university cooperation programmes are invaluable instruments for establishing lasting academic and cultural ties, which simultaneously promote the EU in partner countries." This is achieved through furthering the mobility of researchers, exchanges of students and staff (along with new joint projects), as well as bolstering alumni and EU studies networks.[734] [735] While these strategies are EU-driven, it is the individual citizen,

[729] European Commission. (2019). Towards an EU strategy for international cultural relations. Retrieved from https://ec.europa.eu/culture/policies/strategic-framework/strategy-international-cultural-relations_en. Accessed January 30, 2019.

[730] JOIN/2016/029

[731] Additionally, under the guiding principle of "foster[ing] mutual respect and inter-cultural dialogue" the Communication recognizes that "since people frequently engage across borders using digital tools, communication between peoples should be encouraged to take place under conditions of respect and equality and in a spirit of partnership. Reciprocity, mutual learning and co-creation should therefore underpin the EU's international cultural relations." This highlights the importance of people-to-people contact, albeit specifically in the digital realm.

[732] Cited as Regulation (EU) No 234/2014 of the European Parliament and of the Council of 11 March 2014 Establishing A Partnership Instrument For Cooperation With Third Countries.

[733] The existing frameworks also include "geographic frameworks for cooperation" such as the "European Neighbourhood Policy" which "governs the EU's relations with 16 of its closest Eastern and Southern Neighbours." In the realm of education, "Platform 4 of the Eastern Partnership serves as a forum for enhanced cooperation and policy dialogue in fields such as education."

[734] "-Promote mobility of researchers: through the Marie Curie-Sklodowska Actions, the EU intends to fund 65,000 researchers between 2014 and 2020. This includes 25,000 doctoral candidates and will enable 15,000 researchers from outside Europe to begin or pursue their careers in Europe by 2020.

-Exchange of students and staff and new joint projects: the EU intends to finance over 150,000 scholarships for students and staff involving Europe and other parts of the world between 2014 and 2020. It will fund about 1,000 joint projects involving EU and non-EU universities and youth organisations between 2014 and 2020.

the student, who will ultimately execute said strategies so as to fulfill the established goals.

Focusing on culture as an essential element to EU international relations is not, of course, a new objective. As early as 2001, the European Commission noted that "Europe's political and commercial success in the world is dependent on future decision-makers in third countries having a better understanding of, and closer ties with, Europe."[736] It has been argued that EU interest in "promoting its higher education agenda" in neighboring countries is the direct result of "the prominent position of higher education in the projection of soft power," and the "importance of international cooperation in this field to foster global influence."[737] For example, Action 1 of the Erasmus+ program, the learning mobility of individuals, has long been considered a soft power instrument on European Neighbourhood countries. Through "people-to-people contact," Erasmus participants act as "informal EU ambassadors," spurring changes in cultural and social perceptions.[738] Additionally, the European Commission employs particular policy vehicles and methods to further "soft convergence"[739] of "higher education agendas, such as collaborative projects."[740] These same strategies and objectives are exhibited in the earlier mentioned policy documents, with the same implications for international students as conduits in these cultural diplomacy endeavors.

In the realm of EU legislation on education in cooperation with non-EU countries, a final point to consider: the 2017 Communication Strengthening European Identity through Education and Culture[741] addresses increased xenophobia and cultural divides. The Communication calls for moving "towards an ambitious shared European Agenda on education and culture" as Europe faces a "flaring-up of populism and xenophobia, the risk of violent radicalisation and the need to strengthen the sense of belonging together" since "education forms the basis for active citizenship and helps prevent populism, xenophobia and violent radicalisation." In the face of such division, it aims to "boost mobility and facilitating cross-border cooperation." The international student often plays a central role

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-Alumni and EU studies networks: the Commission will support the establishment of Erasmus+ alumni groups in partner countries and cooperation between these groups and EU delegation. It will combine networking efforts at national and European level and support the integration of EU Centres in the 450 Jean Monnet Centres of Excellence, and promote networking between them. Worldwide, EU studies will reach over 250,000 students every year through teaching and outreach activities."

[735] Most recently, the EU further acknowledged the 2016 strategic approach to international cultural relations through the Council conclusions on 8 April 2019 (7749/19 CC/OOI/np TREE 1.B), recognizing "the need for (1) a cross-cutting approach to culture that includes cultural and creative industries, arts, science, education**,** tourism and cultural heritage, etc." The Conclusions make reference to the previously discussed 2018 New European Agenda for Culture (COM(2018) 267).

[736] European Commission. (2001). Communication from the Commission to the EU Parliament and Council on strengthening cooperation with third countries in the field of higher education. Brussels, 18 July 2001, COM (2001) 385 final.

[737] Botonero, E. M. R. (2013). EU Higher Education as Soft Power in Neighbouring Countries: A Projection of Influence by Compelling Means. In *ECPR General Conference Sciences Po Bordeaux*. p.2.

[738] Perilli, A. (2017). Erasmus student or EU ambassador? People-to-people contact in the European Neighbourhood policy: the cases of Georgia, Ukraine and Tunisia. Bruges Political Research Papers 59/2017. p.2.

[739] Rutkowski, D.J. (2007). Converging us softly: how intergovernmental organisations promote neoliberal educational policy. *Critical Studies in Education*, 48 (2), pp. 229-247.

[740] Botonero 2013 op. cit. p.2

[741] COM(2017) 673 final; spurring from the Gothenburg Social Summit, in which the European Commission outlined it's conceptions for 2025 of a European Education Area.

in combating these tendencies since the raison d'être of international study is often understood to be exposure to, interaction with, and appreciation for other cultures. With student mobility in mind, the Communication proposes four ideas to address these issues: first, by furthering "the mutual recognition of higher education and…periods abroad," which includes building on "existing cooperation schemes" and increasing "cross-border validation of [relevant] certificates;" second, boosting the Erasmus+ program; third, a "roll-out in 2019 [of] the pilot project for an EU student card;" and finally, by "work[ing] towards truly European universities, which are enabled to network and cooperate seamlessly across borders and compete internationally." This speaks to a comprehensive proposal that would utilize transnational study to combat cultural divides.

3.4.7.2.2 Differences Between Individual Member States' Policies and a Lack of Harmonization

Even though the EU has promoted strategies and practices that highlight international study as a key component of its international policies in culture and education, the Member States' still maintain individuality in this realm. While "Europeans acknowledge the importance of the external dimension" to their higher education programs, as well as "initiatives" to market the EHEA (such as Erasmus Mundus), the idea of an external "brand Europe" still lacks traction.[742] Since 2007, the European Commission has worked to develop a "Study in Europe" brand aimed at student recruitment from countries outside the EU, and many European countries have increased marketing efforts.[743] Since that time the Commission has had a presence at multiple educational fairs around the globe, working to promote Europe as an important study and research destination.[744] In contrast to supranational interests in promoting a unified concept endorsing Europe as a university education destination, however, many Member States of the European Union primarily advocate for their own higher education systems.

There are well-organized initiatives within Europe on the national level to "extend national diplomacy through education."[745] Member State government representatives and organizations have often sought and promoted State-led educational exchange.[746] "The external dimensions of national public diplomacy are often aimed at 'country projection and brand promotion' with relatively little focus on the broader and more normative goals that may be represented at the European-level."[747] These efforts reveal a split in ideology between promoting the individual Member States' interests with promoting those of brand Europe.

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[742] Botonero 2013 op. cit. p.5

[743] Verbik, L., & Lasanowski, V. (2007). International student mobility: Patterns and trends. *World Education News and Reviews*, *20*(10). p.3

[744] European Commission, Education and Training 2018 op. cit. (no pagination)

[745] Peterson, P. M. (2013) Global higher education as a reflection of international relations. Retrieved from https://www.eaie.org/blog/global-higher-education-as-a-reflection-of-international-relations/. Accessed August 15, 2019.

[746] The British Council "describes itself as the United Kingdom's international [organization] for educational opportunities and cultural relations," (Ibid. no pagination) and has "offices around the world, sometimes operating as an affiliate of British embassies," offering study grants and sponsoring educational exchanges. (Peterson 2014 op. cit. p.2) The German Academic Exchange Service (DAAD) "plays a similar but less extensive role" (Ibid. p.2) as the most significant German organization in the field of international academic co-operation.

[747] Duke, S. (2013b). The European External Action Service and Public Diplomacy. 'Clingendael' Netherlands Institute of International Relations. Papers in Diplomacy, No. 127. p.5.

The findings of a recent study[748] bolster the idea that there isn't in fact widespread policy harmonization across Europe in regard to student mobility. Through an examination of policy documents from six European countries, the study puts forth the argument that, "while some convergence is notable, particularly in relation to the ways in which student mobility is placed centre-stage within internationalisation strategies, key differences are also evident with respect to: the scale of desired mobility; the characteristics of the imagined 'mobile subject'; the extent to which social justice concerns are brought into play; and the prioritisation given to outward mobility."[749] These findings challenge the notion of policy harmonization between European States with respect to the different EU higher education systems, and point to different interests at play between distinct Member States. This lack of uniformity is reinforced by how other countries view Europe: despite an emphasis on fomenting the EU's higher education agenda in neighboring countries as a soft power instrument, "non-Europeans do not [tend to] identify the EHEA as a single entity," but instead as a "range of different countries and cultures."[750] [751]

A final point of interest illustrates how the behavior of EU Member States contributes to the lack of harmonization. This has to do with the inconsistent treatment of international students within Member State immigration regulations. When third-country national students are not given "immigrant" status—i.e. they do not migrate "to work and live" and "most of them return home when their studies end"[752]—they then become instruments of soft power for that individual State. In returning to their home countries, these students are understood to be important conduits in creating cultural links between the Member State and third countries. Thus it may not be in the interest of Member State authorities to facilitate pathways to staying in the host country after international students finish their degree, which is contrary to EU strategic objectives.[753]

Ultimately, despite useful efforts on different institutional levels, the lack of cohesion is problematic when it comes to people-to-people cultural diplomacy, if promoting "Brand Europe" is the goal. If it is the individual who is acting, and there is already a closer alignment to national identity coupled with Member States promotion of national objectives in international study, individual action may not coincide with the idea of advancing the broader concept of Europe.

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[748] Brooks, R. (2018). Higher education mobilities: a cross-national European comparison. *Geoforum*, *93*, 87-96.
[749] Ibid. p.87
[750] Botonero 2013 op. cit. p.5
[751] Additionally, there is an odd overlap in the way this phenomenon trickles down to the individual. The lack of cohesion among Member States on an institutional level in trying to promote European initiatives and strategies is mirrored by the difficulties faced in fostering a unified European "identity" among citizens—the same individuals who will be acting as cultural ambassadors through people-to-people-exchange.
[752] Patten, C. (2017). Treating overseas students as migrants is not just wrong, it defies common sense. Retrieved from https://www.theguardian.com/commentisfree/2017/apr/04/overseas-students-migrants-universities-brexit. Accessed October 1, 2018.
[753] The Europe 2020 strategy**,** for example, the EU's "agenda for growth and jobs" echoes the idea that student mobility offers multiple benefits including, "increasing human capital… [and] achieving smart, sustainable, and inclusive growth" as well as the necessity of "compensating for the demographic decline" in various European countries. (McGrath & Frearson 2016 op. cit. p.168)

3.5 CONCLUSION

This chapter has examined the conceptualization of the international student as a significant actor of cultural diplomacy in the United States and the European Union. Since the first part of the 20th century, the concept of diplomacy has widened to include the recognition that exchange programs could be used to execute cultural diplomacy objectives. A broadening of the concept of diplomacy has also allowed for citizen diplomats, who engage in this form of diplomacy when "cross-border" relations occur. This bolsters the central argument of this chapter: that the international student has represented a means for national governments to spread their aims of cultural ideals—be it the "image" of America abroad, or, in Europe, the furthering of regional integration objectives and later a common European identity linked to the strategic aims of multilateralism. The principal thread followed how this role has evolved over time as individual actors increasingly operate with more autonomy in the realm of international relations, and in particular, as agents of cultural diplomacy.

Examining international study as an integral part of US foreign policy during its most prolific period, and the figure of the international student within that realm, has shown that although there was a consolidation of power economically and politically, the US government very much relied on its citizens for cultural dissemination. Essentially, during the post-WWII period, US global expansion was supported through educational and cultural means. Unlike other areas of diplomacy, in the execution of cultural diplomacy the state has limited reach without the support of nongovernmental actors, such as students. The role of the individual, the private citizen, became an increasingly important facet to executing the strategy of US global expansion through exporting American values and way of life. How the individual, the international student, acted and continues to act as a conduit for cultural diplomacy, often functioning independently from the State and its objectives, is crucial to understanding the changing nature of international relations, the trajectory of the citizen diplomat, and ultimately that more attention should be paid to the central role of international students within that.

This historical shift in US diplomatic relations to include cultural activities, as well as evolving US educational exchange initiatives, has not been without inherent complexities and tensions, such as competing objectives, efficacy, and eventually, increasing concerns over funding. From the beginning, frictions emerged surrounding the idea of inserting foreign policy agendas into educational exchange since it could pervert the ultimate goals of cross-cultural interaction and experiences. If the initial educational exchange initiatives were intertwined with propagandist aims, they later manifested similar conflicting interests: political objectives vs. educational goals. The question as to whether or not the government has the right to dictate the objectives of educational exchange programs, or if programs should be exempt from political pressures and oversight, remains. This highlights another key point raised: if citizen diplomacy increasingly represents the individual operating freely in the personal sphere, international study and cross-border cultural relations cannot logically be wholly controlled by any agenda. From political to educational objectives, it is the individual actor, the international student, who will ultimately affect the outcome.

This is fundamental: whether the goal is exporting a national image abroad or acquiring cross-cultural understanding, it is the individual, the student, who ultimately determines efficacy. In this line, evaluating the cultural "success" of educational programs through the lens of student experience presents a complex dichotomy of circumstance and subjectivity. The level of diversity in the international student experience, what is taken in, and how one chooses to interpret or react to different scenarios speaks to an increasingly important degree of individualism. The autonomy each student has in shaping perceptions can produce unpredictable outcomes, resulting in situations where international student experiences and actions do not automatically fulfill or align with professed institutional objectives, whether governmental or from the university. Ultimately, as awareness of the role of individuals as consequential actors in educational exchange has increased, there has been, simultaneously, a realization of the challenges faced in effectively managing these individuals to fulfill government's strategic objectives, as illustrated by recent policies from the Trump Administration.

If in the US educational exchange and the international student were used to export the idea of the US abroad, in Europe, regional cooperation in education and student mobility was first used as an essential tool to further the goals of integration, and later, as a means of projecting the idea of a consolidated Europe to third countries. The role of the individual, the private citizen, became an increasingly important facet to furthering cooperation objectives beyond merely the economic in European integration. In contrast to the US, however, tensions and obstacles in Europe have arisen out of the national versus supranational dichotomy.

In the effort to organize the diverse nations of Europe into a political entity, competing views on the role of the States and the degree to which autonomy should be preserved or conceded came into existence. Recognition of this duality is crucial to understanding the dynamics that are at play. This brings up a recurrent consideration: that alongside the beginnings of economic integration in Europe, there emerged an interest in safeguarding diverse national identities while simultaneously promoting a shared common heritage. Against this background, it was the Council of Europe that was a first intergovernmental reference for cooperation in the area of education and culture, as student mobility in the Community would not be addressed until later, when its economic and social development became increasingly intertwined. If at first regional integration in Europe would be described as having economic aims it would later expand and evolve to include broader socio-cultural objectives.

While there were advancements towards further cooperation in the realm of education, difficulties harkening back to the absence of a legal foundation in the Treaty persisted. Importantly, however, the ECJ's interpretation of the Treaty's scope of application in a seminal ruling paved the way for the implementation of the Erasmus Programme in 1987. In its decision, the Council directly stated that the further development of the Community depends on graduates who would have direct experience of studying and living in another Member State—or, that the goal of integration is inherently linked to the transnational, cross-cultural study experience of its citizens. This once again solidifies the central idea that the individual, the student, has represented a key component to European integration

as a conduit for strengthening multilateralism, carrying out the vision of cooperation in education which was seminal for cooperation in additional areas.

It is this history and landscape that contextualizes the role of cross-border mobility as fundamental in the formation of a common European identity among the different EU nations. However, the inherent complexities of a common European identity involve an uneasy coexistence, a sometimes competing sometimes shared exertion of influence, between Europe and its values, and national loyalties, which can be difficult to reconcile. At the same time, if collective identities are socially constructed, they can thus be socially engineered to some degree, which the EU has made use of in its efforts to promote a supranational identity. The increasingly consolidated multilateral objectives of the European Union came to represent a more cohesive ethos, utilizing transnational education and student mobility to further the process of integration and subsequently to project the ethos of the EU abroad. However, a key consideration remains as to whether or not individuals embrace the idea of a European identity, or if students reflect this identity in a period of study abroad, be it in another Member State or third country. If ultimately it is the individual citizen, the student, who will execute said strategies so as to fulfill the established goals this should be contemplated by EU-driven initiatives.

Finally, the national versus supranational dichotomy also affects external action considerations: even though the EU is an international organization formed by plural European states with policies that have an internal dimension, these States also function on the international plane through national external action. The complexity of external action is due to its functioning, either in the intergovernmental or supranational realm. Additionally, the fact that the EU only has supporting competences in education and culture signifies that its capacity for action is fundamentally limited (it adopts mostly non-binding and programmatic acts in this area, and other international organizations with competences on the subject simultaneously put forth actions).

That said, initiatives to promote and enhance instances of cross-cultural diplomacy are numerous, including promoting intercultural exchanges of students and strengthening the European identity through education and culture. However, the lack of harmonization between EU Member States has remained a thorn in the side of supranational level strategic objectives. Individual Member States continue to focus on their own policy goals and objectives, rather than on European-level aims. Issues surrounding competing objectives will be further addressed in Chapter 4, but in regard to higher education economy.

4 The International Student as an Instrument of Higher Education Economy

4.1 INTRODUCTION

Thus far, this work has analyzed two basic conceptualizations: that of the international student as migrant, and the international student as an agent of cultural diplomacy. In this chapter, the international student will be analyzed from a third and final perspective: as an instrument of economic gain for institutions of higher education. A mosaic will be constructed to complete the picture of how the phenomenon of internationalization of higher education sets the stage for this third conceptualization of the international student: as a means of economic profitability. As will be seen, this final conception refers to discussions from prior chapters, but introduces additional findings, rounding out a more integrative vision of the international student. Accordingly, the arguments in this chapter are best presented through a thematic approach with the most prominent aspects analyzed diachronically. Given the common context that is the internalization of higher education within the framework of globalization and economic interests, the transatlantic sector will be assessed as a whole, interweaving analyses of the United States and the European Union in an effort to avoid the repeated revisiting of the many interdependent aspects that make up this discussion.

While governments have historically pursued the promulgation of cultural ideas through international education (albeit often interlaced with political aims), universities are increasingly driven by the economics of student mobility. Internationalization has been critiqued for being economic in orientation, and often thought of as "a product of and response to globalization."[754] "Internationalisation policies and practices, it seems, are complex entanglements of economic, political, social and affective domains."[755] This chapter will first examine the concept itself, addressing the rationales for internationalization, competing ideologies, and historical considerations.[756] The acquisition of international students in the transatlantic sector will be contextualized within existing theoretical discourse, one that reveals a dichotomy between idealistic and economic forces therein. The momentum of globalization has contaminated the idealized vision of cross-cultural exchange in a move "towards understanding (and thereby recruiting) international students as units within the political economy."[757] The case will be made that, in line with this perspective, the international student has become an instrument used by institutions to achieve economic objectives in the higher education sector. This argument builds off the concept that current strategies of internationalization almost exclusively support one end: that of profitability. The model for institutions has shifted and the growing economic value of education globally has led to a focus on

[754] Beck, K. (2012). Globalization/s: Reproduction and resistance in the internationalization of higher education. *Canadian Journal of Education*, *35*(3). p.134

[755] Morley, L., Alexiadou, N., Garaz, S., González-Monteagudo, J., & Taba, M. (2018). Internationalisation and migrant academics: the hidden narratives of mobility. *Higher Education*, *76*(3). p. 538.

[756] The breadth of study on contemporary internationalization of higher education has been largely developed by experts in the field that include Jane Knight, Hans de Wit, Philip G. Altbach, Ulrich Teichler, and Peter Scott, among others.

[757] Lee, J. J., & Kim, D. (2010). Brain gain or brain circulation? US doctoral recipients returning to South Korea. *Higher Education*, *59*(5). p.628.

recruitment and retention of students and scholars, especially those coming from other countries.

In this context, the relevant aspects of higher education within internationalization will be explored including how funding concerns interact with the rising cost of study, the implications of a subsequent focus on international student recruitment, and how policy measures and particular historical events at times compete with institutional efforts. Evidence in the transatlantic center will be used to bolster relevant arguments.

Finally, the fact that international students are increasingly being used as instruments for economic gain in higher education will be called into question, and a concluding proposal presented. In the current view of internationalization, it is understood that students are the customers, the education they receive the product, and other academic institutions represent competitors. However, if the university graduate is seen as the true product in this scenario, effectively and comprehensively integrated cross-cultural interaction would benefit both international students as well as home country students, since it would work to promote a more knowledgeable globalized workforce. Therefore, there must be a shift from conceptualizing the student as simply an instrument of economic gain, to that of an essential component that enriches the institutional experience and environment, which will prove more profitable in the long run for society at large. There must be a move back towards the inclusion of idealism in the internationalization of education, as this goal is not mutually exclusive from economic advancement. In fact, this may well be the way to create more valuable and effective graduates.

4.2 THEORETICAL BACKGROUND: THE RISE OF INTERNATIONALIZATION IN HIGHER EDUCATION

In the past decades the internationalization of higher education has evolved into a strategic process. As it has unfolded, however, the nature and essential qualities of internationalization have not always been consistent, at different times spanning various programs, actions, or components. While the concept has been seen by some as too broad, or even ambiguous, over time one aspect has come to the forefront: a shift from an idealistic/educational focus to an economic one. After a review of interpretations of the term through time, a definition is presented which will be used for the subsequent exploration of this crucial shift. Neoliberalism as a particular element of globalization will be shown to have had an influence in this area, as well as factors that led to viewing educational services from a vantage point of economic competitiveness, furthering the argument that economic drivers increasingly outweigh other motivations.

4.2.1 Contemporary Permutations of the Concept

The internationalization of higher education is a process that has historical foundation, but has been further affected by globalization, and describes what has been occurring in higher education in the last decades.[758] While it "has received a tremendous amount of attention from researchers and scholars in the past decades,"[759] the concept

[758] Montgomery 2010 op. cit. p.4

[759] Ozturgut, O., Cantu, M., Pereira, L. and Krohn, D. (2014). Effective strategies in internationalization of higher education in the United States. *International Journal of Research Studies in Education*. p.31

itself has proven to be somewhat ambiguous. It is a phenomenon is often discussed in the context of "physical mobility, academic cooperation and academic knowledge transfer"[760] within the higher education sector. It is not new—universities have long been thought of as societal institutions with global reach. The movement and flow of "students, scholars, programs, and the institutions of higher education have evolved over time," and continue to grow in the current "knowledge economy."[761] Worldwide, resources and programs have been designed around the concept of internationalization in various forms. However, in scholarly literature this concept has been deemed exceedingly broad, and sometimes ambiguous, with a comprehensive definition of the core idea difficult to pin down. Internationalization is considered by some as "the state of things," by others as a "process," and still others view it as "doctrine,"[762] or, the leading principle or policy advocated for within higher education.

In a broad sense, internationalization has been used to describe the "multiple activities, programs and services that fall within international studies, international educational exchange and technical cooperation."[763] But it is has also been understood to mean simply the inclusion of an international component to an institution or curriculum, with both "international and local elements."[764] More recently, the commonly held definition of internationalization has expanded to include an institutional dimension, being understood as the "process of integrating an international, intercultural or global dimension into the purpose, functions or delivery of post-secondary education."[765] Contemporary internationalization of education is distinct in that now all higher education institutions are expected to be globally minded in one way or another. Indeed, an international orientation permeates all aspects of administration and areas of study within institutions of higher education.[766] Implicit in the process is the implementation of diverse approaches and methods deemed the various "strategies" of internationalization, which are used "to describe the activities done by a university to integrate a global aspect into research, teaching, service functions, management policies and systems.[767] Strategies are understood to constitute both academic initiatives and organizational measures.[768] Academic strategies focus on programs and cross-border collaboration, with organizational strategies focused more squarely on the side of governance and operations, i.e. the means of providing support and allocating resources. Six predominant areas have been identified: student and scholar mobility, recruitment, research exchange and collaboration, expansion of university branches abroad, more globally minded curriculum,

[760] Teichler 2004b op. cit. p.7
[761] Gürüz, K. (2011). *Higher education and international student mobility in the global knowledge economy: Revised and updated second edition*. SUNY Press. p.1-2.
[762] Stier, J. (2004). Taking a critical stance toward internationalization ideologies in higher education: Idealism, instrumentalism and educationalism. *Globalisation, Societies and Education*, *2*(1). p.84.
[763] Arum, S., & van de Water, J. (1992). The need for a definition of international education in U.S. universities. In *Bridges to the futures: Strategies for internationalizing higher education*. C. Klasek (Ed.). Carbondale, IL: Association of International Education Administrators. p.202.
[764] De Wit 1999 op. cit. p.2
[765] Knight, J. (2003). Updated internationalization definition. *International Higher Education*, 33, p.2.
[766] Teichler 2004b op. cit. p.9
[767] Zolfaghari, A., Sabran, M. S. (2009). Internationalization of higher education: challenges, strategies, policies and programs. *Online Submission*, *6*(5). p.4
[768] Knight, J. (2004). Internationalization remodeled: Definition, approaches, and rationales. *Journal of studies in international education*, *8*(1). p.14.

and virtual internationalization.[769] These forms of internationalization are comprised of various components, and often correspond to the needs of institutional policies and necessity.

These are some of the requisite elements to examine when moving forward with this analysis. Understanding the divergent interpretations of this concept is essential to establish the context in which the figure of the international student will be considered as an instrument of higher education economy. Thus, in keeping with the research literature, and for the purposes of this line of inquiry, the term internationalization will center on the aspects that directly apply to the international student, including but not limited to mobility, recruitment, and exchange.

4.2.2 Rationales for Internationalization and Differing Ideologies

Internationalization serves as "the driving force pushing a country, sector or institution to address and invest" in the international dimension to higher education, and is often "reflected in the policies and programs that are developed and eventually implemented."[770] Within the scope of the conception of internationalization previously articulated, the research literature establishes four areas of "rationales" that spur higher education internationalization: socio-cultural, academic, political, and economic.[771] [772] [773] [774] These rationales can be divided into "national level and institutional level"[775] (see Figure 2). While the first two rationales may include more of a cross-cultural focus aimed at mutual understanding, and the latter geared more towards reputation and international profile, all are linked to generating income in some way.[776]

[769] Khorsandi Taskoh, A. (2014). A critical policy analysis of internationalization in postsecondary education: An Ontario case study. (Doctoral Dissertation). The University of Western Ontario. p.24

[770] Sehoole, C. (2006). Internationalisation of Higher Education in South Africa: a Historical Review. Perspectives in Education. Volume 24(4), December. p.5.

[771] Chankseliani, M., & Wells, A. (2019). Big business in a small state: Rationales of higher education internationalisation in Latvia. *European Educational Research Journal*, 1474904119830507.p.641.

[772] Knight, J. (2012). Concepts, rationales, and interpretive frameworks in the internationalization of higher education. In *The SAGE handbook of international higher education*. Deardorff, D., de Wit, H. Heyl, J. & Adams, T. (Eds.) p.8

[773] De Wit 2002 op. cit. p.85.

[774] Knight, J. & De Wit, H. (1995). Strategies for Internationalisation of Higher Education: Historical and Conceptual Perspectives. In *Strategies for Internationalization of Higher Education-A Comparative Study of Australia, Canada, Europe, and the United States of America.* Amsterdam: European Association for International Education (EAIE). p.10-12.

[775] Knight (2004) op. cit. p.8.

[776] Knight (1994) indicates that research literature in the 1990s included "interest in international security, maintenance of economic competitiveness and fostering of human understanding across nations" as rationales. "Environmental interdependence, increasing ethnic and religious diversity of local communities, the reality that many citizens work for foreign-owned firms, the influence of international trade on small business, the fact that college graduates will supervise or be supervised by people of different racial and ethnic groups other than their own…and peaceful relations between nations" were also highlighted as reasons for "global education." [Knight, J. (1994). Internationalization: Elements and checkpoints. Ottawa: Canadian Bureau for International Education. p.4.]

Figure 2. Policy and Programs at the National and Institutional Levels

	Policy	Programs
National	Education and other national-level policies relating to international dimension of higher education; other policy sectors include cultural, scientific, immigration, trade, employment, and culture	National or sub-regional programs that promote or facilitate the international dimension of postsecondary education; can be provided by different government departments or nongovernment organizations; examples of programs include academic mobility programs, international research initiatives, and student recruitment programs
Institutional	Policies that address specific aspects of internationalization and/or policies that serve to integrate and sustain the international dimension into the primary mission and functions of the institution	Programs such as: Student exchange programs Foreign language study Internationalized curricula Area or thematic studies Work/study abroad International students Teaching/learning process Joint/double-degree programs Cross-cultural training Faculty/staff mobility programs Visiting lectures and scholars Link between academic programs Other strategies

Source: Knight, J. (2004). Internationalization remodeled: Definition, approaches, and rationales. *Journal of studies in international education*, 8(1). p.14

Inside this framework of rationales, it has been argued that the principal philosophies of internationalization are idealism, educationalism, and instrumentalism, and that these sometimes-contradictory ideologies are the driving forces behind internationalization[777] (see Figure 3). Idealism seeks to utilize cooperation and cross-cultural knowledge to increase global awareness of socio-political and economic conditions in an effort to promote a more just world. Educationalism argues that being exposed to different academic environments enhances the educational experience and stimulates diverse learning. Finally, instrumentalism understands higher education as a "means to maximize profit, ensure economic growth and sustainable development," and also as a way to "transmit desirable ideologies of governments, transnational corporations, interest groups or supranational regimes."[778] This most "practical" of the philosophies is economic in essence, its purpose being financial gain.

[777] Stier 2004 op. cit. p.88-93
[778] Ibid. p.90

Figure 3. Stier's Internationalization Ideologies in Higher Education Outlined

	Idealism	Instrumentalism	Educationalism
Vision	Create a better world	Sustainable development	Education (in a broader sense)
Focus	The moral world	The (global) market	The individual's learning process
Goals	Mutual understanding, respect, tolerance among people Social change Redistribution of wealth Personal commitment	Economic growth, profit Competence availability Exchange of know how Cultural transmission	Enrich learning New perspectives and knowledge Personal growth Commitment to learning
Strategies	Provide global knowledge Facilitate insights Stimulate empathy and compassion	Attract international fee-paying students Provide relevant professional training Conduct market-relevant research	Stimulate self-awareness and self-reflection Train intercultural competence
Critiques	Arrogance Victimization Ethnocentrism	Brain drain Increased global disparity Exploitation Cultural imperialism	Acadamicentrism Chauvinism Individualizing Social and global problems

Source: Stier, J. (2004). Taking a critical stance toward internationalization ideologies in higher education: Idealism, instrumentalism and educationalism. *Globalisation, Societies and Education, 2*(1). p.94

These distinct ideologies advance different agendas within the scope of internationalization, but they reveal a clear tilt toward economic motivations. Increasingly, institutions are focusing on "consumer-managerial models of higher education."[779] The process of internationalization has been linked to the "commercialization" of higher education and academic research, as well as the increasing competition aimed at recruiting international students in an effort to "generate revenue, secure national profile, and build international reputation."[780] This includes marketing to potential students, establishing a presence abroad, executing exchange programs and research partnerships, as well as "internationalizing" the curriculum, all in an effort to increase competitiveness in the global marketplace.

4.2.3 Historical Considerations Regarding a Shift in Rationales

In order to fully comprehend the current concept and rationales of internationalization of education, the context in which this contemporary understanding developed will be reviewed. De Wit (2002) comprehensively examined the evolution and trajectory of the history of internationalization within European and American higher education systems,

[779] Chang, D. F. (2015). Implementing internationalization policy in higher education explained by regulatory control in neoliberal times. *Asia Pacific Education Review*, *16*(4). p.604.
[780] Khorsandi Taskoh 2014 op. cit. p.158

and identified three interrelated phenomena that generally correspond to the march of history. First, the international dimension to higher education before the 20th century was "more incidental than structured and strategic;"[781] next, as discussed in the previous chapter, this dimension would later evolve into a foreign policy focus on international education (initially US-driven); and finally, what is currently understood as internationalization of higher education would emerge in the post-Cold War era alongside an increasing focus towards globalization (and regionalization), and would solidify into strategic action.

After World War II, and for the latter half of the twentieth century, US institutions were at the forefront of higher education internationally.[782] In the US, "the push toward internationalization in higher education dates back to… [this] period and has gained strong momentum over the years to become a routine component of the undergraduate curriculum."[783] During the post-WWII era, the "international dimension was more present in American higher education than in Europe," since the continent was "still too heavily focused on recovering from the severe wounds of two world wars and on reconstruction to be able to invest in international educational exchange and cooperation."[784] Additionally, as discussed in the previous chapter, government-led educational exchange during this period had an inherent duality between early idealistic roots in fostering peace and cross-cultural understanding, while also promoting a political agenda.

In this vein, in the 1960s and 70s in the transatlantic sector the internationalization of higher education continued to be stimulated more by national governments than by the higher education sector itself, leading to further development of organized programs and activities for primarily political objectives.[785] That said, universities and institutions of higher education were inextricably linked to the process. By the 1980s, however, the global panorama began to change as the "strengthening of the European Community and the rise of Japan as an economic world power challenged not only the political and economic dominance of the US but also its dominance in research and teaching."[786] This emerging global landscape can be seen as a catalyst for a shift in higher education: the promotion of cross-cultural cooperation and international study became more than just about fulfilling idealistic objectives or a political agenda, as economic competitiveness became an increasing factor.

4.2.3.1 The Political Influence of Neoliberalism in Higher Education

Part of this shift to the economic relates to one leading theoretical perspective about globalization and its relationship to student mobility flows. This perspective is grounded in neoliberalism and its focus on free market, free trade, competition and laissez-faire economic policies. Neoliberalism is "a particular element of globalization in

[781] De Wit 2002 op. cit. p. 9
[782] Altbach, P., & De Wit, H. (1995). International higher education: America abdicates leadership. *International Higher Education*, (1). p.11.
[783] Camiciottoli 2010 op. cit. p.269
[784] De Wit 2002 op. cit. p.10
[785] Kerr, C. (1990). The internationalisation of learning and the nationalisation of the purposes of higher education: Two laws of motion in conflict? *European Journal of Education*, 5-22.
[786] De Wit 2002 op. cit. p.13

that it constitutes the form through which domestic and global economic relations are structured."[787] This idea pushes "increased global competition through the removal of protective policies and the implementation of global and regional laissez-faire trade regimes," with an emphasis on competition that "dominates policy discourses at both the national and international levels."[788] The research literature reveals that student mobility has expanded rapidly under neoliberal values.[789] For example, an interest in English language acquisition as a means to better job opportunities can be understood as resulting from neoliberalism: "English has emerged as the globally dominant language under US hegemony,"[790] and has increasingly become a desirable asset to compete in the global marketplace. Additionally, the realization that academic credentials directly correlate to the betterment of the economic and social conditions of degree-holders drives a global demand for higher education. University degrees have been shown to translate into increased opportunities, especially for students coming from lower socio-economic circumstances, or less developed countries.[791] This creates an impetus for international study.

This relationship between globalization and higher education continues to deepen, which has put "…pressure on universities to respond to global integration."[792] Neoliberal values have thus led to a "restructuring" of university systems not only with regard to funding and governance, but also in what "guides" academic and nonacademic programs.[793] "Governments tend to minimize rules and regulations to provide more institutional autonomy,"[794] which increasingly raises competition within higher education institutions and acts as a driver to attract students who supply a principal source of funding through tuition fees.[795]

Importantly, the professed aims of internationalization often deviate from what is actually laid out in formal policy documents or strategies that stem from neoliberalism. The findings of a 2014 Canadian case study bolster this claim, highlighting a chasm between the ideological rhetoric of internationalization and what occurs in practice: there is a separation between a "liberal-academic" discourse and a "neoliberal-instrumental" strategic practice.[796] The former encompasses "educational/academic" and

[787] Olssen, M., & Peters, M. A. (2005). Neoliberalism, higher education and the knowledge economy: From the free market to knowledge capitalism. *Journal of Education Policy*, 20(3). p.313.
[788] Shields, R. (2013). Globalization and international student mobility: A network analysis. *Comparative Education Review*, *57*(4). p.612.
[789] Scott (2012) argues that a "driver of the development of the modern university is the growth of 'world' cultures" backed by "the spread of global (i.e. US or European) 'brands'" as well as "the imposition of a neoliberal economic…world order," with the university itself "deeply implicated in promoting this vision" mainly through internationalization strategies. [Scott, P. (2012). The Political Economy of Mass Higher Education: Privatisation and Nationalisation. Nottingham Jubilee Press. p. 14.]
[790] Samers & Collyer 2017 op. cit. p.86
[791] Mazzarol & Soutar 2002 op. cit. p.82
[792] Zheng, J. (2010). Neoliberal globalization, higher education policies and international student flows: An exploratory case study of Chinese graduate student flows to Canada. *Journal of Alternative Perspectives in the Social Sciences*, *2*(1). p.221.
[793] Torres, C. A., & Schugurensky, D. (2002). The political economy of higher education in the era of neoliberal globalization: Latin America in comparative perspective. *Higher Education*, *43*(4), 429-455.
[794] Chang 2015 op. cit. p.603
[795] Olssen & Peters 2005 op. cit. p.328
[796] Khorsandi Taskoh 2014 op. cit. p.ii

"multicultural/humanitarian" ideals, while the latter is focused on "competition-based values." The split between discourse and implementation has idealists and educationalists ceding influence to instrumentalists in the ideological tension between internationalization and economic strategic objectives. The "financial imperative" of international student recruitment is "prioritized" over more idealistic rationales like "developing an international culture in the university."[797] In this context, the international student has become a crucial factor in the quest for economic gain in the higher education sector.

4.2.3.2 Economic Competitiveness and the Commodification of Higher Education Services

In the wake of increasing globalized integration and development, in the 1990s international study became a genuine industry. Along with the phenomenon of globalization, accelerated technology and communication boosted worldwide interconnectivity. While international education, including exchange and study abroad programs, had previously been championed as holding the "vague sense that such studies were the path to mutual understanding and world peace," beginning in the 1990s, "internationalizing education in the US [was] proposed as a way to help restore [US] economic competiveness in the world."[798] Programs grew and expanded, moving away from only second language learning and "one-dimensional course offerings," and began to take into consideration "all relative impact variables on learning, including the duration and the housing options for the programs."[799] This can also be understood to involve the means and availability of funding options. The stage was set for a shift towards the commercialization of higher education.

It was during this time that the European Community invested in research and development to compete with the US, and the European Commission expanded its role to promote the mobility of students and bolster university networks.[800] What's more, as discussed in the previous chapter, the Commission took the same stance with regard to promoting cooperation and exchange programs both inside the EU and externally; economic competitiveness was the principal rationale.[801]

A final point of interest: in 1995, the World Trade Organization put in force the General Agreement on Trade in Services (GATS), which has presided over the intersection of higher education and international trade, since education is one of the services regulated in the international agreement. GATS served to commodify the service of higher education in the global sphere.[802] In this context "it is obvious that the economic view on higher education… developed and formulated by the EU Declarations is similar

[797] Warwick, P. & Moogan, Y. J. (2013). A comparative study of perceptions of internationalization strategies in UK universities. *Compare*, 43(1), 102-123.
[798] Harari, M. (1992). The internationalization of the curriculum. *Bridges to the future: Strategies for internationalizing higher education*. Klasek, C.B., Garavalia, B.J. & Kellerman, K.J. (Eds.). p.77
[799] Lee 2012 op. cit. (no pagination)
[800] De Wit 2002 op. cit. p.13
[801] Competitiveness in the "technological race" with the US and Japan was also a factor. [De Wit, H., & Callan, H. (1995). Internationalisation of higher education in Europe. In *Strategies for Internationalization of Higher Education-A Comparative Study of Australia, Canada, Europe, and the United States of America.* Amsterdam: European Association for International Education (EAIE). p. 76.]
[802] Lane, J.E. & Owens, T. L. (2012). The International Dimensions of Higher Education's Contributions to Economic Development. In *Universities and colleges as economic drivers: measuring higher education's role in economic development*. Lane, J. E., & Johnstone, D. B. (Eds.). p. 14-15.

to and compatible with the view developed… by GATS."[803] A 1997 study[804] highlighted this clear transition from political motivations to the economic: in the Scandinavian countries, Austria, Germany, the United Kingdom, and the Netherlands, as well as in Central and Eastern Europe, findings point to a "tendency to shift from educational, cultural, and political factors to economic factors as the dominant rationale for internationalization." [805] As economic objectives became the driving force behind European regional cooperation in education and exchange initiatives, the international student emerged more clearly as a crucial instrument in achieving these goals.

4.3 THE SHIFT TO ECONOMIC FACTORS: MANIFESTATIONS IN HIGHER EDUCATION

Since the principal rationale for internationalization is increasingly economic in nature, it is necessary to examine how this change has been manifested in higher education. Recognizing that "an advantage of the great economic powers of the last century was their higher education sectors," higher education institutions are being increasingly regarded as important potential "engines of economic growth" with many governments interested in developing and strengthening these institutions.[806] There are two facets to this: first, the relationship between education and economic growth, and second, the revenue generated by the institutions themselves. Regarding the former, economic development is inherently linked to the development and transmission of knowledge, and a positive association between schooling and economic growth has been demonstrated.[807] [808] With respect to the latter, institutions have steadily been growing their focus on strategies and initiatives that are predominately economic in orientation. This will be the primary aim of the following sections: to explore how this tendency has played out in higher education.

If in the past governments have perceived cross-border higher education activity as an important facet to diplomatic efforts, institutions, including colleges and universities, are operating more and more "based on their own strategies and motivations."[809] Many of these non-state actors, such as places of higher education, are understood to be engaging in economic diplomacy.[810] Public universities essentially function as businesses and thus are participants in the processes of economic diplomacy, especially when contacts between such entities and governments are initiated or facilitated by administrators. In most educational diplomacy a variety of motives come into play, but, as will be shown, an

[803] Lorenz 2006 op. cit. p.131
[804] Titled *National Policies for the Internationalisation of Higher Education in Europe,* done by the Swedish National Agency for Higher Education.
[805] De Wit 1999 op. cit. p.3
[806] Lane, J.E. (2012). Higher Education and Economic Competitiveness. In *Universities and colleges as economic drivers: measuring higher education's role in economic development*. Lane, J. E., & Johnstone, D. B. (Eds.). p.1-2.
[807] Temple, J. (2001). Growth Effects of Education and Social Capital in the OECD Countries. OECD Economic Studies (33). p.5.
[808] Studies done to quantify what the EU and its Member States would attain from educational achievement, in terms of increased future GDP, for example, find that "long-term economic progress is the human capital of a country" and essential to that is the development of "high-level skills." [Hanushek, E. A., & Woessmann, L. (2012). The economic benefit of educational reform in the European Union. *CESifo economic studies*, *58*(1). p.97.]
[809] Peterson 2014 op. cit. p.3
[810] Bayne, N., & Woolcock, S. (2007). *The new economic diplomacy: decision-making and negotiating in international economic relations*. Ashgate Publishing. p.88.

increasing interest in acquiring fee-paying international students is a prime motivator for the promotion of educational exchange activity of late.[811]

4.3.1 The Impact of the Rising Cost of Study on Funding and Institutional Behavior

With economic rationales at the forefront of internationalization, it is important to discuss higher education funding, its trajectory and current status to better understand the functioning and strategies of institutions. Funding for educational exchange programs has historically come from a diverse pool of resources. In the US, programs like the Boxer Indemnity Scholarship and The Belgian-American Educational Foundation received funding from relief sources, not the national budget. The Fulbright Program was also borne out of the creative reorienting of funds by taking advantage of foreign land sale credits owed to the US. Later, independent organizations like the IIE and NAFSA relied heavily on philanthropic funding, most notably from the Ford Foundation. However, as discussed in the previous chapter, government funding for programs became increasingly harder to come by.[812] While many of the initiatives and programs in early US educational exchange operated independently from universities, it is important to keep in mind the crucial role funding has always played in international study.

A first consideration to this discussion is recognizing the current range and diversity of international students. One of the complexities to ISM that has been discussed is the wide variety of profiles that encompass international students: there are short-term study abroad or exchange program students, long-term degree seeking students, and virtual students, among others. Additionally, when addressing student flows, they can be incoming international students, or outgoing. Finally, different types of financing options are available to different international students. Meaning, outgoing students who are attached to a home university may have financing options within the parameters of paying for that university, while international students who choose to do their entire degree program abroad may have more difficulty securing funding coming from another country.

The next consideration is how the rising cost of study is affecting students in general. The cost of higher education across the world has increased exponentially, but most notably in the United States. Over the last several decades there has been a 213% increase in cost at public four-year institutions, and a 129% increase at private schools, with prices adjusted to account for inflation.[813] Although public institutions receive varying degrees of government funding and private institutions are often generously endowed, much of the burden of financing an advanced degree has fallen on the students and their families. At the same time, increasingly difficult "economic conditions and federal budget reductions have weakened or created considerable uncertainty around the prospect for growth of household income," as well as around the availability of federal funding.[814] [815]

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[811] Peterson 2014 op. cit. p.5

[812] See Chapter 3, Section 3.3.6

[813] Hoffower, H. (2019) College is more expensive than it's ever been, and the 5 reasons why suggest it's only going to get worse. Business Insider. Retrieved from https://www.businessinsider.com/why-is-college-so-expensive-2018-4?IR=T. Accessed December 10, 2019.

[814] Bogaty, E. (2013). Moody's Investors Service: US Higher Education Outlook Negative in 2013. Retrieved from http://www.marquette.edu/budget/documents/USHigherEducationOutlookNegativein2013.pdf. Accessed March 15, 2018.

This has meant changes to how individual students afford university. Funding can mean need-based financial aid, which includes grants, merit-based scholarships, or student loans. Scholarships are typically awarded based on merit, and grants are usually given due to financial need. In the US, the majority of grants come first from academic institutions, then the federal government, other institutions, and finally state governments.[816] This slowdown in growth of household incomes coupled with increases in tuition costs translate into a greater strain on US students and families to afford a university education. As a result, these circumstances "have led many young people to student loans to bridge the gap between rising costs and their own and their families' resources," with the result that student loans have increasingly become "one of the most common forms of financial aid."[817] Student loan debt in the US has skyrocketed in the past decades.

Along with the increased cost of attending university, those who choose to study abroad often incur even higher costs. The majority of US students studying internationally have chosen two-week to semester-long programs offered by their home universities,[818] which often proves more expensive.[819] Alternatively, international students coming to the US have even fewer possibilities for funding and have to pay out of pocket, which means more revenue for the university. These economic concerns have directly affected the thinking and behavior of institutions of higher education, most notably in that it has created a climate of increased competition and thus a heightened focus on attracting and retaining students, especially international students.

Unlike in the US, in Europe, states have traditionally been the primary subsidizers of higher education. While different countries use different funding models, it is estimated that "public funding represents between 50% and 90% of the universities' income structures" in the EU [820] [821] (see Figure 4). However, "the growing shortage of public

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[815] In recent years "as state spending declined and federal investments grew sharply" there have been changes to funding availability since "the federal government mainly provides financial assistance to individual students and specific research projects, while state funds primarily pay for the general operations of public institutions." [Stauffer, A. and Oliff, P. (2015). Federal and State Funding of Higher Education A changing landscape. Pew Trusts. Retrieved from https://www.pewtrusts.org/~/media/assets/2015/06/federal_state_funding_higher_education_final.pdf. Accessed December 12, 2018.]

[816] College Board. (2019). Total grant aid by source over time. Retrieved from https://research.collegeboard.org/trends/student-aid/figures-tables/total-grant-aid-source-over-time. Accessed January 1, 2020.

[817] Houle, J. N. (2014). Disparities in debt: Parents' socioeconomic resources and young adult student loan debt. *Sociology of Education*, *87*(1). p. 53.

[818] Institute of International Education. (2017). Top 25 Destinations of U.S. Study Abroad Students, 2014/15-2015/16. *Open Doors Report on International Educational Exchange*. Retrieved from https://www.iie.org/opendoors. Accessed February 20, 2018.

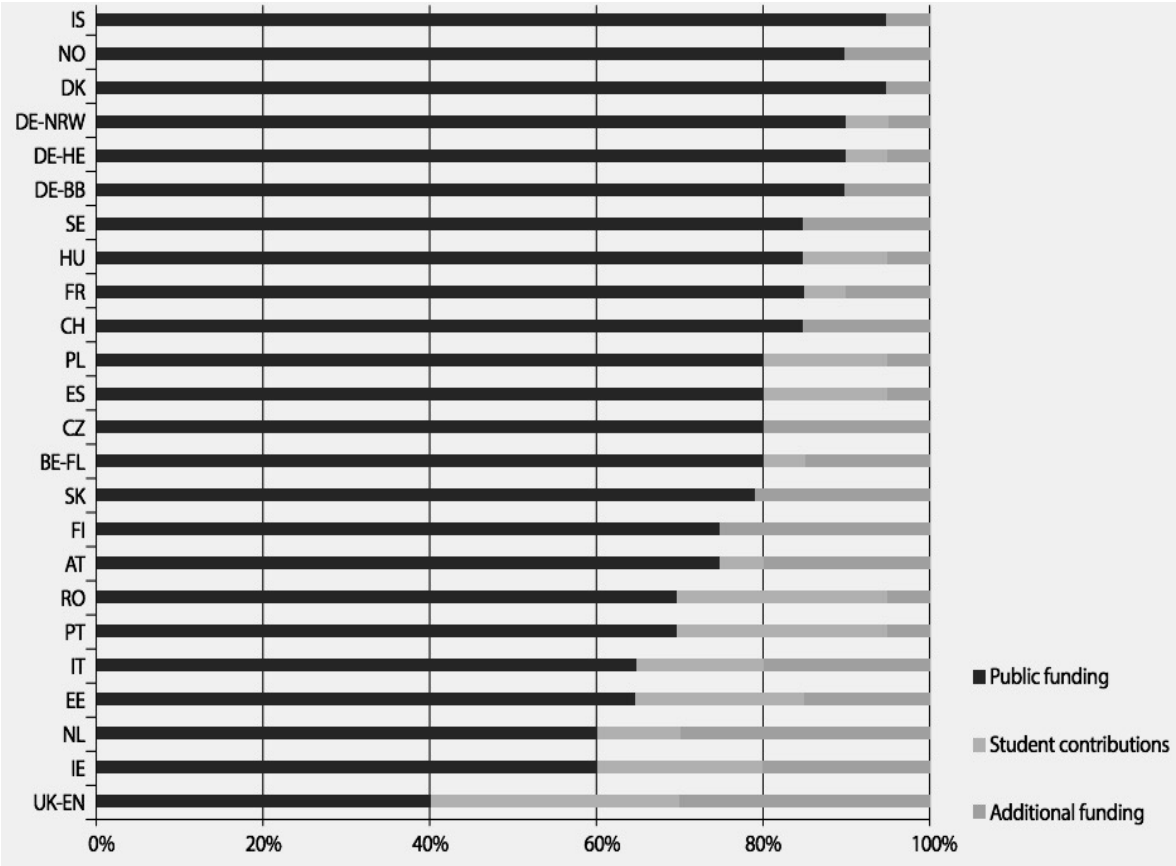
[819] It should be noted that there is another profile of students who choose to do their entire degree program abroad, which would generate different considerations since the cost of higher education tuition outside the US is, in general, considerably lower than in the United States. However, other costs such as displacement and living expenses come into play.

[820] Estermann, T., Bennetot Pruvot, E. & Claeys-Kulik, A. L. (2013). Designing strategies for efficient funding of higher education in Europe - DEFINE Interim report. *European University Association*. p.7

[821] In a similar vein, "20% of the overall funding for ERASMUS is allocated to the EACEA" and the other 80% is "distributed by the DG EAC among those states participating in decentralised action," and the states can decide how and where to apply those funds. [Heger, F. (2013). Erasmus—for all? Structural challenges of the EU's exchange programme. In *The Erasmus phenomenon—symbol of a new European generation?* Feyen, B. & Krzaklewska, E. (Eds.) p.69] The Education, Audiovisual and Culture Executive Agency (EACEA) oversees the funding for "education, culture, audiovisual, sport, citizenship and volunteering," [European Commission. (2019b). About EACEA. Retrieved from https://eacea.ec.europa.eu/about-eacea. Accessed April 1, 2019.] and the Commission's Directorate General for Education and Culture (DG EAC) is the branch of the EU on charge of "policy on education, culture, youth, languages,

funds, combined with the desire for getting away from the state as the sole source of a university's funding, has contributed to an unprecedented preoccupation in European higher education with opening up additional and alternative sources of funding."[822] [823] This includes support from foundations, private individual or corporate donors. One repercussion of this has also been that, more and more, governments in Europe are unwilling to fund students coming from outside the EU/EEA,[824] and the introduction of application and tuition fees for international students is a "relatively new and sometimes controversial development."[825] The necessity of maintaining competitiveness in the international arena is evident, in large part due to the economic returns these students provide.

Figure 4. Simplified Average Income Structure of Public Universities in Europe*



*Findings rounded up to the nearest multiple of 5

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and sport." [European Commission. (2019c). DG EAC - DG for Education and Culture. Retrieved from https://ec.europa.eu/knowledge4policy/organisation/dg-eac-dg-education-culture en. Accessed April 1, 2019.]

[822] Weiler, H. N. (2000). States, markets and university funding: New paradigms for the reform of higher education in Europe. *Compare: A Journal of Comparative and International Education*, *30*(3). p.335.

[823] European universities have long aimed to compete on equal terms with universities in other countries by offering a high-quality study environment and high academic standards—not on the basis of less costly education.

[824] Interestingly, outside the US, in the post-war period foreign universities providing free tuition for their own students often extended the same courtesy to American students. (Arndt 2005 op. cit. p.114)

[825] Woodfield, S. (2012). Key trends and emerging issues in international student mobility (ISM). In *Globalization and internationalization in higher education: Theoretical, strategic and management perspectives*. Maringe, F., & Foskett, N. (Eds.). p.115.

The European university systems included are as follows: IS – Iceland; NO – Norway; DK – Denmark; DE-NRW/DE-HE/DE-BB – Germany; SE – Sweden; HU – Hungary; FR – France; CH – Switzerland; PL – Poland; ES – Spain; CZ – Czech Republic; BE-FL – Belgium; SK – Slovakia; FI – Finland; AT – Austria; RO – Romania; PT – Portugal; IT – Italy; EE – Estonia; NL – Netherlands; IE – Ireland; UK-EN – England

Source: Estermann, T., Bennetot Pruvot, E. & Claeys-Kulik, A. L. (2015). Designing Strategies for Efficient Funding of Universities in Europe - DEFINE Final Publication. *European University Association*. p.24

A third consideration is the effect that rising costs and limited availability of funding have on enrollment in higher education, which has been studied in both the US and Europe. A wide variety of studies in the US "tend to confirm a positive and considerable sensitivity of students' education decisions to the cost of education, whether these costs are influenced by tuition fees or student aid variations."[826] Outside the US, one significant study[827] in Europe found a positive impact of public funding of education (via grants and loans) on the enrollment of graduates in higher education in Sweden. These studies indicate an important link between possibilities for funding and enrollment decisions, and more broadly, educational choices in general.

In sum, the fact that economic determinants are understood to affect student choices can be extended to student mobility and international programs. Program tuition and displacement expenses are counted as factors that influence a student's overall decision to pursue higher education, either in his or her home country or abroad, but, as discussed, costs associated with student mobility are often even higher due to increased living expenses and a greater possibility of higher tuition fees.[828] And while students' international study motivations are subject to many factors including "external influences from family, other networks, media, [or] policy,"[829] financial considerations remain front and center. The availability of "infrastructure to pursue education abroad," which would include "financial support systems offered by national governments," or the institutions of higher education themselves,[830] is crucial. The cost for a semester abroad could be comparable to a semester at their US institution, but additional expenses such as transportation to and from the country, food, transit costs and other travel expenses often add up.[831] All institutions do not possess the same levels of "endowed funds to support overseas education," so if the university does not offer a means of offsetting the costs of studying abroad, "a student's semester or year away could add significantly to his or her family's financial burden."[832] This scenario has a key implication for institutions of higher education: it exacerbates a climate of competition. Universities are vying for and are in need of revenue, which, in turn, translates into an increased pressure on institutions to

[826] Winter-Ebmer, R., & Wirz, A. (2002). Public funding and enrolment into higher education in Europe (No. 503). *IZA Discussion paper series*. p.6.
[827] See Fredriksson (1997) [Fredriksson, P. (1997). Economic Incentives and the Demand for Higher Education. *The Scandinavian Journal of Economics, 99*(1), 129-142. Retrieved from http://www.jstor.org/stable/3440617.]
[828] Gribble 2008 op. cit. p.30
[829] Reinold 2018 op. cit. (no pagination)
[830] Such infrastructure might include "financial support systems offered by national governments," the institutions of higher education themselves, or the available "bilateral and multilateral frameworks" in place to assist mobility between countries. [Ibid. (no pagination)]
[831] MarksJarvis, G. (2017). Study abroad appeals to more U.S. college students, but costs can mount. Retrieved from https://www.reuters.com/article/us-column-marksjarvis-studyabroad/study-abroad-appeals-to-more-u-s-college-students-but-costs-can-mount-idUSKBN1E02AE. Accessed April 01, 2018.
[832] Ungar 2016 op. cit. (no pagination)

develop effective and innovative financial strategies, and has meant more of a focus on fee-paying international students.

4.3.2 An Emphasis on International Student Recruitment; Implications and Obstacles

The aforementioned scenario of increased competition coupled with the economic value of higher education in the current global climate has led to a focus on recruitment and retention of students and scholars from other countries. Higher education has become a "major global export commodity" and developed countries have capitalized on that by actively recruiting international students.[833] Since the 1990s, sustained growth in international student numbers in the US and Europe has been attributed to continued pro-active and aggressive marketing strategies in international educational markets, resulting in student mobility being very much influenced by the economic interests of those who offer prestigious higher educational opportunities globally.[834] Most notably, this shift toward a highly marketed model and an institutionalization of global flows of students has been heightened in countries where fee-paying students are deemed an important part of the economy.[835]

International students, specifically graduate students at many research universities, have become "central" to the US higher education economy.[836] Receiving countries stand to benefit greatly from incoming international students by way of revenue generated, and the economic benefit of international students to the US economy has been steadily on the rise in the past decades. The US Department of Commerce reports that "in 2016 international students brought $39 billion to the United States economy, through their spending on tuition, room and board and living expenses."[837] As a result, entrepreneurial colleges and universities work to "actively recruit" international students to fulfill not only professed cultural aims, but more importantly, economic objectives.[838] Recognizing that international student enrollment in the US is essential to institutional revenue, there has been increased competition for international students in the global sphere.[839] Tactics such as aggressive marketing schemes and policy measures that enable pathways to permanent residence have made destinations outside the US increasingly attractive to potential international students.[840]

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[833] Gribble 2008 op. cit. p.26

[834] Findlay, A. (2011). An assessment of supply and demand-side theorizations of international student mobility. *International Migration* 49. p.177.

[835] Robertson 2013 op. cit. p.43

[836] In the 1990s, economists estimated that the US received more international students than all other nations combined. The students represented "an invisible export estimated at between $12 and $13 billion annually—the fourth largest US export within the service sector." (Arndt 2005 op. cit. p.115)

[837] Institute of International Education. (2017). IIE Releases Open Doors 2017 Data. Retrieved from https://www.iie.org/Why-IIE/Announcements/2017/11/2017-11-13-Open-Doors-Data. Accessed February 28, 2018.

[838] Lee, J. J., Maldonado-Maldonado, A., & Rhoades, G. (2006). The political economy of international student flows: Patterns, ideas, and propositions. In *Higher Education: Handbook of Theory and Research*, vol 21. Smart J.C. (eds) p. 545.

[839] While international student enrollment in the US has been on the rise since the 1970s, the higher education sector saw its first "absolute decline" in international student enrollments in 2004, due to diverse factors, including increased competition. (Ibid. p.545)

[840] Examples include Australia, which has been cited as using competitive marketing strategies to attract international students, and Canada, which has changed visa policies for international students to extend stays or facilitate means to permanent residence.

In Europe, it has long been understood that intra-European student mobility is essential for reaching economic objectives, since a study period abroad would likely increase geographical mobility for students' future careers, and increase the general competitiveness of the European economy.[841] However, as discussed in the previous chapter, an EU-wide focus on maintaining competitiveness externally beyond EU borders has also been clearly articulated.

In 2003 the European Commission declared that "Europe needs excellence in its universities, to optimize the processes which underpin the knowledge society and meet the target, set out by the European Council in Lisbon, of becoming the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion." In the years following the promulgation of this focus, changes were evident. EU educational plans were subsequently oriented towards an "enlargement of scale of the European systems of higher education" so as to "enhance its 'competitiveness' by cutting down costs,"[842] and on the national level "in many European higher education systems" an increasing "market orientation" could be observed.[843] Similarly, starting in 2007 the European Commission worked to develop a "Study in Europe" brand aimed at student recruitment from countries outside the EU, and many European countries increased marketing efforts.[844] The fact that institutions in Europe are increasingly unwilling to fund students coming from outside the EU,[845] demonstrates a clear interest in the economic returns that third country international students provide.

As the previous chapter indicated, while many Member States of the European Union have consistently advocated for their own individual higher education systems, it has been important to present a unified brand that focused on endorsing the strengths of Europe as a destination for a university education. The Commission has had a growing presence at multiple educational fairs around the globe, working to promote Europe as an important study and research destination,[846] but harmonization obstacles still persist. The EU's pursuit of intensifying international student recruitment external to the EU highlights the importance of third country international students as a critical tool of economic gain within a changing higher education model.

4.3.2.1 The Interaction between Institutional Efforts and (Immigration) Policy Measures

Despite greater competition, the US and the UK remain the principle global

[841] Van Mol, C. (2011). The influence of European student mobility on European identity and subsequent migration behaviour. In *Analysing the consequences of academic mobility and migration*. Dervin, F. (Ed.) p.30.
[842] Lorenz 2006 op. cit. p.129
[843] Jongbloed, B. (2008). Funding higher education: a view from Europe. *Center for Higher Education Policy Studies*. p.6
[844] Verbik & Lasanowski 2007 op. cit. p.3
[845] As discussed previously, this has sometimes translated into the introduction of application and tuition fees for such students.
[846] European Commission. (2018). Making the EU more attractive for foreign students - Education and training - European Commission. Retrieved from https://ec.europa.eu/education/policy/international-cooperation/education-quality_en. Accessed March 15, 2018.

recruiters of international students. Both countries, however, continue to experience a conflicting dichotomy between an educational policy attuned to the financial benefits of attracting international students, and an immigration policy that is faced with "increasing public pressure to reduce immigration."[847] Facilitating student mobility is inherently linked to immigration procedures, and understanding how institutional efforts may be helped or thwarted by policy measures is crucial to this examination.

As discussed in Chapter 2, international students encounter incongruous treatment in different national and regional contexts, and that treatment is subject to change depending on political shifts. However, students are still generally perceived as more advantageous than other groups of migrants not only because of the skills they offer (and will continue to develop) in their host country, but also as a potential revenue source. International students and their dependents make important "financial contributions" to their host institutions and countries.[848] This often translates into a policy focus for governments and institutions. Host countries have sometimes adjusted immigration policies to better facilitate international student migration since a large majority of these students are self-funded, which leads to more profits for the schools.[849]

This has not been without certain negative impacts. There have been claims of favoring students from particular countries or preferential treatment of certain applicants. In 2017 the Sunday Times reported that the Russell Group of universities in the UK, which include Oxford and Cambridge, had "cut British undergraduate numbers, often substantially, since 2008," while at the same time "numbers of non-EU students, who pay as much as four times the fees charged to British and EU [students, had] increased by 39%."[850] If international students are being favored, home country students could be at a disadvantage moving forward. Furthermore, the "skills gap created" due to changing demographics will most likely result in further policies that "coordinate migration programs with the economic needs of the country through international students."[851] Efforts to compensate for demographic shifts are being made because international students are seen as an important component to the future workforce, especially in Europe.[852] All of these considerations gravitate around a central truth: the efforts being made by institutions (and sometimes supported by policy decisions) to bring in international students are economic in nature.

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[847] King & Raghuram 2013 op. cit. p.6
[848] Lee 2008 op. cit. p. 2
[849] Gribble 2008 op. cit. p. 25
[850] Gilligan, A. (2017) Universities take foreign students ahead of British. *The Sunday Times* [Online]. Retrieved from https://www.thetimes.co.uk/edition/news/universities-take-foreign-students-ahead-of-british-5nppfw5ks.
[851] Choudaha, R. (2017). Three waves of international student mobility (1999-2020). *Studies in Higher Education*. p. 830.
[852] As discussed in the previous chapter this is illustrated by a 2016 proposal by the European Union aimed at revising EU-wide policies of "attracting and retaining talent" in an effort to address "skills shortages and demographic limitations." [European Commission. (2016). Proposal for a Directive of the European Parliament and the Council on the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment. Retrieved from http://eurlex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016SC0194. Accessed January 5, 2019.] Additionally, the Europe 2020 strategy, the EU's "agenda for growth and jobs," echoes the idea that student mobility offers multiple benefits including, "increasing human capital… [and] achieving smart, sustainable, and inclusive growth" as well as the necessity of "compensating for the demographic decline" in various European countries. (McGrath & Frearson 2016 op. cit. p.168)

4.3.2.2 Competing Forces with Institutional Efforts: Disruptions by Historical Events

Even though government policy can, at times, work to facilitate institutional objectives geared towards bringing in international students, the current of world events can also move the political climate unpredicted directions. In this vein, the dichotomy between institutional strategies aimed at acquiring international students, and immigration policy that creates obstacles for such students has been intensified in the wake of particular incidents.

4.3.2.2.1 Repercussions of the Post-9/11 Security Agenda

What occurred on September 11th, 2001 proved significant in affecting how international students were perceived and received in the United States. After the 1993 World Trade Center bombing where six people died, it was discovered that one of the terrorists was in the US on an expired student visa. This finding spurred the "formation of a multiagency task force in 1995" to review "INS processes for monitoring international students."[853] Years later, on September 11th, 2001, another attack on the World Trade Center towers, this time the most lethal terrorist strike in US history, would deeply affect public opinion (and policy) towards immigrants.

International student education in the United States changed greatly in the wake of the attacks.[854] The focus on domestic safety in the post-9/11 security agenda resulted in policies totally "opposed to the projection of soft power;" a clear example of this was in the "sudden and significant decline in the numbers of overseas students enrolling in US universities" following increasingly restrictive visa policies.[855] This worked against the momentum of institutions trying to expand and diversify their revenue sources through an emphasis on procuring international students.

Although the United States, due to a strong research focus and a prestigious reputation, had historically been an important study destination, the 9/11 terrorist attacks changed that.[856] The attacks led to a shift in public attitudes towards immigrants in general, and in particular those with perceived connections to Islam. Public policy quickly followed suit. Stricter visa requirements made it more complicated for students to enter and live in the US for study purposes.[857] Requirements under the 2001 Patriot Act impeded cultural exchanges, and significantly curtailed the number of international students at US universities.[858] Overseas, Muslim students no longer applied for student visas in the same numbers, and by 2003 in Europe public opinion surveys showed that favorable views of the US had diminished by 40 percent or more in Spain, France, Germany, Italy and the UK.[859] This would coincide with a decline in international students coming to the US to

[853] Urias & Yeakey 2009 op. cit. p.78
[854] Danley 2010 op. cit. p.67
[855] Melissen 2005 op. cit. p.33-34
[856] Choudaha 2017 op. cit. p.826
[857] OECD. (2005). Education at a glance 2005: OECD indicators. OECD Publishing, Paris. http://dx.doi.org/10.1787/eag-2005-en
[858] Paden & Singer 2003 op. cit. p. 9
[859] Heimlich, R. (2003). America's Image Further Erodes, Europeans Want Weaker Ties. Pew Research Center. Retrieved from http://www.people-press.org/2003/03/18/americas-image-further-erodes-europeans-want-weaker-ties/ Accessed April 16, 2018.

study,[860] which would have obvious implications for universities that were increasingly interested in taking advantage of that revenue.

During this time, in order to nurture student mobility within Europe, the Bologna Process and European Higher Education Area started to focus on creating a more integrated system of higher education inside the EU.[861] As discussed in the previous chapter, academic mobility had faced certain challenges in the framework of EU integration, and the EHEA aimed to address such barriers within the EU. With success of intra-EU student mobility programs, there was increased interest in bolstering cooperation in education with third countries, including through marketing efforts. As a result, just prior to the 2008-2009 financial crisis, "five of the top ten global study destination countries included the UK, France, Italy, Austria and Switzerland."[862] That is to say, the climate of the competition in the higher education sector has persisted as the power dynamic between the US and Europe as the most sought after study destination seems to increasingly be on more equal footing. At the center of this dynamic is the figure of the international student, as an instrument in the strengthening of the economic potential of higher education systems, or as a victim of exclusionary policies when used as a means of allaying public concern surrounding immigration—in some cases in competing fashions.

4.3.2.2.2 The Economic Downtown and its Effects on International Student Recruitment

Given the economic heft of the revenue generated from incoming international students, it is reasonable to posit that universities suffering from the effects of the 2008-2009 crisis would see the profitability in turning their attention towards such students. The financial crisis began in 2007, and peaked in 2008-2009, with many states in the US suffering serious budget cuts in the years following. Public institutions thought of as being "one of the keys to restoring the nation's economic competitiveness in the increasingly competitive global economy," suffered "worsening austerity due to, in part, significant cuts in state appropriations."[863] And, although universities were limiting costs to address debilitated economic conditions following the 2008-2009 crisis, they also began examining their traditional business model.

A 2013 report on US higher education indicated a negative outlook for the entire sector, a trend that had started in 2009. As discussed, public funding for higher education had also been in decline, and universities needed the revenue brought in from overseas student tuition to bolster and diversify income.[864] "Years of depressed family incomes and net worth, as well as uncertain job prospects for many recent graduates and a slight decline in the number of high school graduates, [created] enrollment pressure and weakened pricing

[860] Research literature indicates that the attacks and the restrictive policies that followed had a negative effect on student mobility to the US from 2001 to about 2005; numbers did not recuperate until 2006/2007, which may have been due to a reevaluation of policies and simplification in visa procedures for students. (Samers & Collyer 2017 op. cit. p.274)
[861] Choudaha 2017 op. cit. p.827
[862] Ibid. p.827
[863] Johnstone, D. B. (2012). The Impact of the 2008 Great Recession on College and University Contributions to State and Regional Economic Growth. In *Universities and colleges as economic drivers: measuring higher education's role in economic development*. Lane, J. E., & Johnstone, D. B. (Eds.). p.277.
[864] Verbik & Lasanowski 2007 op. cit. p.3

power for colleges and universities [in the US]."[865] One of the responses to this complex economic situation is that countries "started to consider how they might implement or strengthen strategic approaches to international recruitment."[866] "In addition to the external factors…that are influencing student mobility, post-recession budget cuts, primarily in US public higher education, have prompted many institutions to actively recruit international students."[867] This resulted in an amplified focus on the necessity of international students interested in studying in the US (and able to pay the high cost of tuition) as crucial instruments of economic gain for institutions of higher education.

In Europe, while the crisis "slowed down the implementation of the Lisbon Strategy," which sought to position the EU as a highly competitive region, the "equality of opportunity for participation in higher education seems to have been well-preserved in the EU Member States."[868] However, this might not necessarily have been the case for third country international students in Europe. During this period, funding concerns, including availability of student aid, were part of policy discussions geared towards making reforms. In several EU countries, such as the Netherlands and Finland, proposals involved "allowing universities to charge tuition fees for international students from outside the EU to broaden [their] funding base."[869] This provides more evidence that the international student is seen as an important source of funds for universities.

4.4 Evidence in the Transatlantic Sector

The competing rationales laid out in earlier sections can be demonstrated by the trajectory of internationalization at The State University of New York (SUNY) system since 2001. The largest comprehensive public university system in the United States, the SUNY system encompasses sixty-four campuses, twenty-nine state-operated institutions, five statutory colleges, and thirty community colleges.[870] From 2001-2010 the strategy of the SUNY system under Robert Gosende followed a "purist" vision with regard to international education. After 35 years as a Foreign Service Officer, Gosende served as Associate Vice Chancellor for International Programs during this period,[871] and believed in the national importance of cultural exchange.[872] In a 2013 interview, when asked his thoughts on the value that universities place on international educational engagement, Gosende responded, "They don't place enough value on it... I think the problem is at the colleges and universities... The administration doesn't want to hear about a student leaving

[865] Bogaty 2013 op. cit. p.3
[866] Verbik & Lasanowski 2007 op. cit. p.7
[867] Choudaha, R., Chang, L. & Kono, Y. (2013) International Student Mobility Trends 2013: Towards Responsive Recruitment Strategies. World Education News & Reviews, 26(2). Retrieved from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2275946. p.2.
[868] This differed from the reality in the US, shown above, "with its substantial higher private costs for university education." [Ritzen, J. (2015). European universities during the crisis: A public policy perspective, with a brief excursion to the US (No. 107). IZA Policy Paper. p.1]
[869] Ritzen 2015 op. cit. p.6
[870] SUNY. (2019). History of SUNY. Retrieved from https://www.suny.edu/about/history/. Accessed February 1, 2019.
[871] SUNY System Administration. (2019). Robert R. Gosende Biography. Retrieved from https://system.suny.edu/media/suny/content-assets/documents/global/Gosende-longer-bio.pdf Accessed January 6, 2020.
[872] This knowledge is derived from and affirmed by conversations with administrators and faculty members during the author's six-month visiting scholar appointment at the State University of New York at New Paltz.

and not paying the tuition at [the university in question]! It's a business decision."[873] His successor, Nancy Zimpher, who served as Chancellor from 2009-2017, had her own motivations that eventually translated into a different vision for international education at SUNY.

Under Zimpher, *The Power of SUNY* plan was launched in April 2010, and championed six principles for New York's economic recovery, including "SUNY and the World."[874] This strategy was aimed at creating a "culturally fluent, cross-national mindset" and employing it to "improve New York's global competitiveness."[875] In a 2011 Whitepaper detailing the SUNY and the World strategy, three of the six metrics "deemed most appropriate for assessing comprehensive internationalization," and used to "measure future progress," were "international student enrollment," "enrollment in and number of study abroad programs," as well as "international student economic impact." [876] [877] SUNY subsequently held the first *Critical Issues in Higher Education* conference in 2011 aimed at furthering the state system's agenda of providing affordable higher education and "revitalizing" New York state's economy.[878] In the context of the 2008 financial crisis, Zimpher's policy initiatives clearly advocated for the higher education sector to take on the role of facilitator of economic growth, in large part through recruitment of international students. This unabashedly blurs the line between attracting international students to fulfill the traditional objectives of cross-cultural exchange and mutual understanding, with that of objectives that are almost exclusively oriented towards economic gain.

Ultimately, efforts to increase international student numbers, and with it their economic contributions to the SUNY system and the state of New York, seem to have been successful. In the fall of 2009, international students enrolled in SUNY schools were "estimated to have contributed a total of [$409.3 million] to the State's economy.[879] According to NAFSA data, in the 2018-2019 academic year the financial contributions of international students totaled over $670 million[880]—and that was only from the top 25 SUNY institutions with the highest contributions (see Figure 5). These numbers illustrate

[873] Schuster, J. (2013). An Interview with Ambassador Robert Gosende. Retrieved from http://thepolitic.org/interview-with-ambassador-robert-gosende/. Accessed January 10, 2020.
[874] The other five "Big Ideas" included "SUNY and the Entrepreneurial Century," "SUNY and the Seamless Education Pipeline," "SUNY and a Healthier New York," "SUNY and an Energy-Smart New York," and "SUNY and the Vibrant Community." [Zimpher, N. L. (2012). Foreward to *Universities and colleges as economic drivers: measuring higher education's role in economic development*. In Lane, J. E., & Johnstone, D. B. (Eds.). p.xiii]
[875] Power of SUNY - Strategic Plan (2018). SUNY and the World. Retrieved from https://www.suny.edu/powerofsuny /world/. Accessed June 4, 2018.
[876] Dunnett, S., Leventhal, M. & Sillner, B. (Co-Chairs) (2011) SUNY and the World: Toward Comprehensive Internationalization. A White Paper by The SUNY and the World Innovation Team. Wood, J. (Ed.) p.12-13.
[877] The other three metrics were "enrollment in foreign languages," "number of international scholarships and fellowships awarded to SUNY faculty and staff," and "SUNY RF Research Funds from International Sources and for International Projects." Ibid. p.12-13
[878] Zimpher 2012 op. cit. p.xi
[879] That same year "all international students enrolled in New York state institutions of higher education contributed $2.296 billion to the state's economy." Dunnett et al. 2011 op. cit. p.16
[880] This number does not include financial contributions for certain campuses that would be top ranking in terms of international student contributions (such as the New York State Colleges at Cornell University). Data for public colleges that belong to larger institutions that are private was not available independent of overall numbers.

the weight of the international student as a significant instrument of financial gain not only for the SUNY institutions, but also for the state of New York.

Figure 5. Economic Contributions of International Students at SUNY Schools* for the 2018-2019 Academic Year**

Institutions within the SUNY System	Financial Contribution in Dollars
University at Buffalo	$201 million
SUNY Stony Brook University	$200.3 million
SUNY Binghamton University	$98.3 million
SUNY University at Albany	$69.3 million
SUNY College at Plattsburgh	$13.7 million
SUNY Oswego	$10.9 million
SUNY Purchase College	$10.3 million
SUNY New Paltz	$10.3 million
SUNY Institute of Technology	$6.1 million
SUNY College of Environmental Science and Forestry	$6.1 million
Buffalo State SUNY	$5.8 million
SUNY Westchester Community College	$5.5 million
SUNY Fredonia	$4.7 million
SUNY Geneseo	$3.9 million
SUNY Rockland Community College	$3.6 million
SUNY College at Brockport	$3.5 million
SUNY Cortland	$3.1 million
SUNY Upstate Medical University	$2.2 million
SUNY College at Old Westbury	$2.2 million
SUNY Maritime College	$2 million
SUNY Broome Community College	$1.9 million
SUNY Oneonta	$1.7 million
SUNY Cobleskill	$1.2 million
SUNY Canton	$1.1 million
SUNY College of Optometry	$976,117

*Certain campuses such as the New York State Colleges at Cornell University were not included.
**NAFSA data was compiled from the US Department of Education, US Department of Commerce, and Institute of International Education for the 2018-2019 Academic Year.

Source: NAFSA Economic Value Statistics. (2020) New York: Benefits from International Students. Retrieved from https://www.nafsa.org/isev/reports/state?year=2018&state=NY.

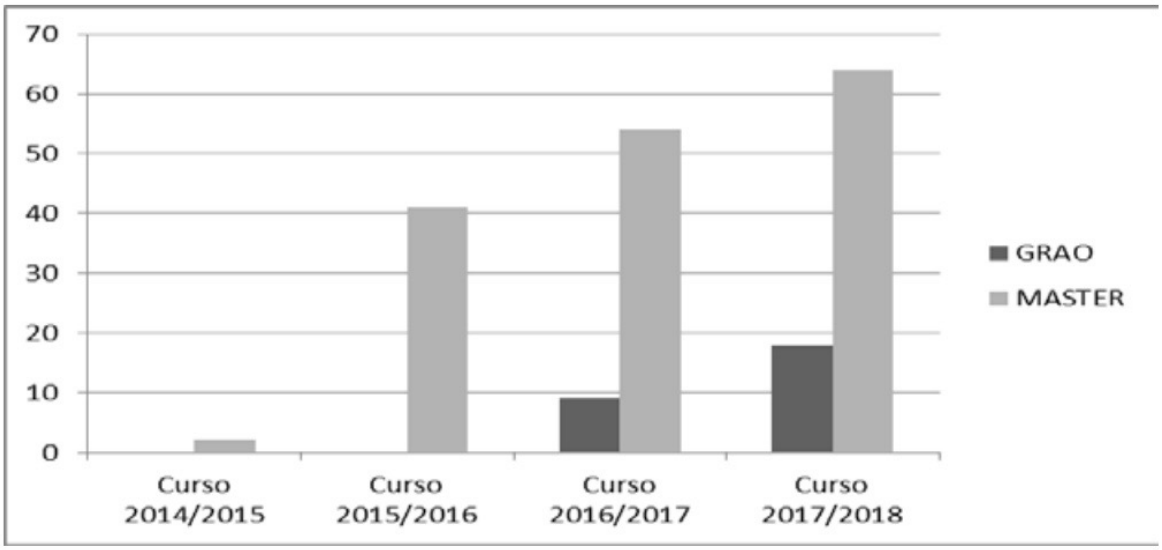
In Spain, evidence of a university moving towards economic motivations can be seen through the strategic activities of the Universdad de Santiago de Compostela. In the 1990s, alongside an expanding Spanish university system, the Galician university system experienced "crecimiento espectacular."[881] More universities has meant changes to enrollment numbers, with the number of students in each institution "cada vez menor, y las universidades tienen que competir por su captación, ya que, tal y como están diseñados los planes de financiación universitaria, un alumno es sinónimo de recursos financieros (públicos y privados)."[882] Against this backdrop, the current Plan Estratéxico de

[881] Fernández López, S., Rodeiro, D. & Ruzo, E. (2004). Competitividad de la oferta entre universidades regionales. EERS. Estudios económicos regionales y sectoriales. Vol. 4-1; p. 89.
[882] Ibid. p. 89.

Internacionalización da Universidade de Santiago de Compostela (2017-2020) [883] published via the office of Vicerreitoría de Internacionalización, outlines the university's motivations and strategic plans for internationalization during the 2017 to 2020 period. In the introduction, it acknowledges the necessity to compete internationally, stating that the USC is "buscando situarse como centro de referencia no mundo da educación superior a escala global," using its unique characteristics to enhance its attractiveness "neste mercado global tan competitivo." Building off of and complementing several initiatives including the Programación Plurianual 2015-2018, Plan Estratéxico 2011-2020 and Campus de Excelencia Internacional (CEI), the Plan Estratéxico reveals several interesting points.

First, the Plan concedes that an important motivation for internationalization efforts is financial, stating "é importante a captación de fontes de financiamento externas para reforzar e mellorar a posición de prestixio da USC a nivel mundial," and that internationalizing is a central means to achieving that: "a internacionalización é un dos principais factores que pode actuar como revulsivo colectivo de imaxe, autoestima, mellora de rendemento, aumento de nivel académico e incremento sensible de fondos." Essentially, a key component to attaining external funding for the university is directly correlated to an increased international dimension, and thus internationalization efforts are necessary, including a growing focus on attracting international students (see Figure 5).

Figure 5. International Student* Recruitment at the USC between the 2014/15 and 2017/18 Academic Years



*This excludes what the USC identifies as "exchange students" and "visiting students" that come through different mobility programs or bilateral agreements, and instead looks at "degree-seeking students" admitted to the USC for a degree program.

[883] Aprobado por unanimidade no Consello de Goberno do 18 de outubro 2017. [USC Vicerreitoría de Internacionalización. (2017). Plan Estratéxico de Internacionalización da Universidade de Santiago de Compostela (2017-2020). Retrieved from http://www.usc.es/export9/sites/ webinstitucional/gl/goberno/vrestudantes/descargas/PEI-2017-2020-Outubro-CG.pdf p.6.]

Source: USC Vicerreitoría de Internacionalización. (2017). Plan Estratéxico de Internacionalización da Universidade de Santiago de Compostela (2017-2020). Retrieved from http://www.usc.es/export9/sites/webinstitucional/gl/goberno/vrestudantes/descargas/PEI-2017-2020-Outubro-CG.pdf p.6.

Second, under the "motivacións cara ao proceso de internacionalización," the importance of attracting international students is directly addressed—but with a focus on those coming from outside the EU. Indeed, the Programa de Atención a Estudantes Extracomunitarios (PATEX) is a newly created unit aimed at "captar e acompañar aos estudantes estranxeiros realizando as tarefas de contacto, seguimento e recepción do alumnado estranxeiro…captado en feiras educativas internacionais ou que contacta directamente coa USC." Meaning, this new department is wholly focused on attracting, recruiting and retaining international students from third countries, who pay considerably more than students from Spain or other EU Member States. It is here that the international student is clearly identified as a means for economic gain, specifically those who provide the most monetary benefit.

These cases, albeit limited in scope,[884] illustrate a shift in rationales to economic factors as the dominant reasoning for internationalization. In both scenarios, the international student acts as key currency in furthering measures for economic development for the institutions of higher education.

4.5 A Final Thought: Re-conceptualizing the "Product" and Moving away from a Focus on Economic Gain

This analysis would not be complete without considering how the international student fits into a common conception of the student in higher education research literature: the student as consumer. As discussed, across the higher education sector "competition is increasing," and there is a need for institutions to present a "logo, positioning statement and core values" so as to "deliver on the brand," the overall message being that higher education institutions are now "a business, promoting services via its brand."[885] In the commonly accepted framework, students are the customers, the education they receive the product, and other academic institutions represent competitors. The idea is that institutions sell their "products," which can be understood to mean degrees or credentials, to "potential buyers,"—the students.[886] The concept of "students as customers" of higher education is "a natural consequence of taking marketing in higher education seriously."[887] With regard to the international student, many opportunities for study abroad are being made available, which further contributes to the competition associated with attracting "customers" in the global market.

This view of students as customers/consumers has led to several interesting consequences. While universities have often determined their customers' needs in the past, students are

[884] The author's academic connections to the two universities discussed acted as impetus for their inclusion in this analysis.
[885] Molesworth, M., Nixon, E., & Scullion, R. (2009). Having, being and higher education: The marketisation of the university and the transformation of the student into consumer. *Teaching in higher Education*, *14*(3). p.277.
[886] Nordensvärd, J. (2011) The consumer metaphor versus the citizen metaphor: different sets of roles for students. In *The Marketisation of Higher Education and the Student as Consumer*. Molesworth, M., Nixon, E., Scullion, R. (Eds.) p.159.
[887] Cuthbert, R. (2010). Students as customers. *Higher Education Review*, *42*(3). p.4

increasingly becoming more vocal, and voicing their dissatisfactions with aspects of the programs offered. To address this, the UK introduced the National Student Survey,[888] "reinforcing the idea that students are buyers in a higher education market."[889] Furthermore, in an attempt to differentiate themselves from competitors, academic institutions and governments are working to develop and implement new strategies to expand into diverse markets.[890] There has been much insight into this topic in research literature, most notably in the UK, both through an analysis of policy documents as well as through the lens of student perspectives.[891]

Still, researchers have identified problems with this framework. Some scholars contend that, "there are limitations and constraints upon applicants' knowledge and understanding of the higher education system because the product is not visible and the opportunities for repeat purchase are limited."[892] [893] These limitations are proof that the idea of students as consumers is not an exact parallel, since students who view themselves as customers may have individual expectations so diverse as to be impossible to meet. Additionally, there is the concern of a "degradation of quality and standards" as students "shop" for institutions that require less rigorous work for the same achievements—and universities lower their standards to remain attractive to such "customers."[894] [895] Institutions of higher education are being put in a troublesome position as they navigate a fine line between maintaining standards and prestige, and at the same time attracting students.

Most market-oriented literature focuses on "external stakeholders" such as customers and competitors, but things are more complicated in education, where the nature of the product can vary. In fact, it has been theorized that the *graduate,* not the degree being "sold," is the real product in this scenario.[896] In the 1980s, it was suggested that future employers are actually the customers, students represent the raw materials, and degree-holders (the graduates) are the product.[897] In this line of thinking, universities would not be marketing to prospective students, but instead to companies and employers who would eventually be hiring their graduates. Despite its age, this paradigm offers an interesting take on the objectives of international programs: if the ultimate goal is to make graduates more attractive to potential employers, those with in-depth cross-cultural knowledge,

[888] The Survey, managed by the Office for Students in England, is aimed at university students in their final year and allows them to review, and critique, if the case may be, their higher education experience. [Office for Students. (2019). About the NSS. Retrieved from https://www.thestudentsurvey.com/about.php. Accessed April 1, 2019.]
[889] Cuthbert 2010 op. cit. p. 4
[890] Verbik & Lasanowski 2007 op. cit. p.1
[891] See Tomlinson (2017); Brooks & Abrahams (2018)
[892] Hemsley-Brown, J. (2011). Market Heal Thyself: the challenges of a free marketing in higher education. *Journal of Marketing for Higher Education*, 21, 115-132. Retrieved from http://epubs.surrey.ac.uk/148864/3/heal%20thyself.pdf p.8
[893] See also Brown, R. (2011). The march of the market. In *The Marketisation of Higher Education and the Student as Consumer*. M. Molesworth, Scullion R., and E. Nixon (Eds). Routledge, Abingdon, 11-24.
[894] Cuthbert 2010 op. cit. p. 6
[895] Carlson, P. M., & Fleisher, M. S. (2002). Shifting realities in higher education: Today's business model threatens our academic excellence. *International Journal of Public Administration*, *25*(9-10). p.1106.
[896] Binsardi & Ekwulugo 2003 p. 319
[897] Ibid. p. 319 [see also Kotler, P. and Fox, K. (1985). *Strategic Marketing for Educational Institutions*. Prentice-Hall Englewood Cliffs, NJ.]

understanding and experience would ostensibly be more sought after in a globalized market. "The changing world of work requires that employees possess a repertoire of cultural competencies for managing their career development. As borders of trade, travel, and immigration shift throughout the world, people need to be prepared for working with others whose cultural background is different to their own."[898] Graduates who have studied and lived abroad should essentially be more desirable products.

From this perspective, if academic institutions in the US and Europe are interested in producing more marketable, and ultimately more valuable products, enhancing the impact that international students have on home country students, along with the campus environment in general, is fundamental. That means that there must be a shift from conceptualizing the international student as an instrument of economic gain, to that of an agent broadening and enriching the institutional environment, which will ultimately prove more profitable in the long run for society. Universities would be better served not by simply increasing the number of international students on campus, but by working on ways to more fully integrate those students into their new environment and by promoting programs that foster in-depth cross-cultural interactions. This would benefit both international students as well as home country students—greater exposure to and experience with each other would result in a more knowledgeable globalized workforce, which ideally works to promote increased cultural sensitivity and awareness in professional spheres in the long-term.

In sum, strategies for economic development do not have to corrupt or replace an institution's mission, as there are many essential functions related to learning and research that are not necessarily connected to economic goals.[899] Exposure to diverse ideas, the development of analytical thinking, and social awareness are invaluable tools often acquired from higher education. To further advance those critical skills there can and should be more of a focus on treating international students as crucial educational components in the creation and "production" of more valuable graduates entering the global market.

4.6 CONCLUSION

The internationalization of higher education has often been idealized as a form of cultural and diplomatic exchange. There has always been a divide between this educational diplomacy and its promoters, and administrators focused on profitability, but "the role and the character of the political and economic rationales for internationalization of higher education have changed more radically over time."[900] Especially at an institutional level, as discussed, there is often a chasm between "the rhetoric and the reality of internationalization" efforts.[901] In recent years this debate has been brought to the

[898] Arthur, N. (2000). Career Competencies for Managing Cross-Cultural Transitions. *Canadian Journal of Counselling*, *34*(3). p.204.

[899] Lane 2012 op. cit. p.22

[900] De Wit, H. (2000) Changing rationales for the internationalization of education. *International Higher Education*. Retrieved from https://pdfs.semanticscholar.org/5f5b/56075fe4f1242b60b50a75ab4a9dc87e0ce5.pdf p.2.

[901] Barrows, L. C., & United Nations Educational, S. E. (2000). Internationalization of Higher Education: An Institutional Perspective. Papers on Higher Education. p.5.

forefront by a renewed understanding of the potential economic impact of international students. Globalization and increased competition in higher education economy have distorted motivations for cross-cultural exchange, and international students are now seen as potential revenue by host countries and institutions of higher education.[902]

Against this backdrop, the central argument for this chapter has been presented: as the ideological rhetoric of internationalization has taken a backseat to strategic processes that support economic objectives, the international student has become an essential instrument used for economic gain in the higher education sector. The spread of neoliberalism as an important element of globalization and the fact that higher education is now a major global export commodity have led to more of a focus on and competition for international students in the global sphere. This has been manifested in higher education through a reorientation of institutional strategies to include more of an emphasis on recruitment and retention of international students. These tendencies have not been without complications, however. At times the momentum of interest for bringing in international students was helped by policy measures, adjusting immigration procedures to be more favorable to international students, but at times it was hindered by historic events such as 9/11 that swung the pendulum of public opinion in the alternate direction. For institutions of higher education, though, international students remained essential variables in the economic equation. Indeed, the trajectory of internationalization strategies within the SUNY system and at the Universidade de Santiago de Compostela illustrate a shift in rationales, and the fact that, from the perspective of universities, international students are increasingly treated first and foremost as units of financial gain.

This paradigm should be reconsidered. Contrary to the common conception of students as consumers in higher education research literature, if students are not in fact consumers (or, potential buyers of the educational "product" being marketed by universities) and it is the university graduate that is the true product, universities need to move away from utilizing international students primarily as a means of advancing the economic goals of higher education institutions and concentrate on the important, enriching contributions such students can make to a university community. Once the focus moves away from upping international student numbers for economic gain, and is put back on encouraging significant, cross-cultural interaction and discourse through quality programs that fully integrate international students with home country students, the true products, the graduates, will be individuals of superior caliber to enter an increasingly globalized workforce and world.

[902] Lee et al. 2006 op. cit. p.545

5 GENERAL CONCLUSIONS

Each chapter of this dissertation has focused on a different manifestation of how the international student is perceived and portrayed across different disciplines. Collectively, the substantive chapters have investigated the ways in which the international student is understood in these contexts, with special consideration paid to the US and the EU. While the individual chapter conclusions have reiterated the key findings ascertained therein, the aim here is to emphasize the principal contributions of this work. With that in mind, the totality of this research has moved towards one aim: developing three unique conceptualizations of the international student that have not yet been comprehensively treated in research literature, so as to broaden the conceptual understanding of the same. It has demonstrated the extent and diversity of the complex considerations that embody the international student in these disciplines and beyond. The outcome has brought together multifarious findings and reflections, provided additional arguments and offered novel conclusions regarding the figure of the international student in international migration law, diplomacy, and higher education economy.

This work has analyzed three basic conceptualizations: that of the student migrant, a figure that encompasses diverse functions on a complex migration continuum; the international student as an agent of cultural diplomacy; and the international student as an instrument of economic gain for institutions of higher education. The first has been situated within the basic structures that underlie international migration law, with its distinctions and definitional gaps, subject to incongruous treatment in different national and regional contexts. The second has been assessed as a conduit of national governments' objectives in the pursuit of the dissemination of cultural ideals, and also increasingly as an independent observer and assertive participant in cross-border relations within a globalized world. The last was analyzed as a key factor in economic considerations for institutions of higher education against a backdrop of funding concerns and recruitment. The goal has been not only to present further conceptualizations of the international student, but also to argue the necessity in broadening established constructs, stressing a more integrative view of the international students' role in the global sphere.

A first recurrent theme of this work is initially presented in Chapter one, which provided theoretical grounding through an introduction to the vernacular of the field of international students and their mobility. The complex factors that come into play when contextualizing the figure of the international student were assessed, in order to both enrich and add dimension to the narrative. This foundational chapter surveyed how diverse terms have been used, how they must be contextualized, and what aspects must be included in order to evaluate data, understand trends, and come to conclusions. Governments and organizations have not always been in accordance on the precise meaning of these terms, and it is here that a first insight emerges: a lack of unified concepts and definitions in ISM poses challenges to conceptualizing the international student. While this finding is not new, its scope has been aligned with the purposes of this research and serves to lay the groundwork for subsequent questions raised in the substantive chapters. Definitional discrepancies regarding who constitutes an international student directly link to issues

seen in later chapters, most notably in the realm of international migration law, regarding how the treatment of and the rights afforded to student migrants differ between receiving countries.

Having broadly defined the international student, the legal context that surrounds this figure, and the rights and limitations accorded to it, were delineated in the next chapter. Through the lens of international laws and norms, the international student is classified as a migrant, and is thus subject to international migration law. And, since the pursuit of international study is the determining characteristic of such migrants, access to education is the relevant focal point. Against a backdrop of the foundations, rationale and sources of international migration law, including customary law, treaty law and soft law, an analysis of the right to higher education (enshrined in a range of international conventions) offered insights into the rights afforded to student migrants. In this regard, Chapter 2 presents a second significant finding concerning the scope of the right to education. The 1960 Convention against Discrimination in Education clearly establishes a more comprehensive understanding of the right to higher education, defining education as "all types and levels of education," and protects the right to access it. This means that national origin should not impede access to education of any type or at any level. Thus, if higher education is inaccessible in one's country of origin, one should have the right to migrate to attain it—an essential principle to student migration.

The chapter raises another important issue, which is the fact that student migrants hold a status that can overlap with other migrant classifications (such as those of workers, or immigrants). This highlights a third significant finding of this work: defining student migrants in such a limited fashion (exclusively as students) is fraught. Differing approaches for entry requirements are often the result of how national governments choose to address diverse needs and changing political climates. Both entry rights and the rights afforded to student migrants in the host country are determined by individual States, and are thus not codified as universal. While States are compelled to not discriminate, they are within their right to determine policy within their jurisdiction, including decisions regarding student migrants. However, as this research has illustrated, when student migrants are narrowly defined it often proves inadequate to address the multiplicity of their roles. This is evidenced through US immigration legislation and the complexities of becoming a permanent resident: the student migrant is a temporary figure in US immigration law that alone does not provide possibilities for long-term stay; while student migrants can eventually become immigrants in the US, their visa classification and eligibility would have to change to facilitate that. Additionally, this can be seen in the EU through the national and supranational level tensions on migration issues that have consistently been a defining factor. In this context, although the regulation of student migrants differs between EU citizens studying in other Member States and incoming third-country national student migrants, both raise questions with regard to equal treatment, and the problematic nature of limiting a student migrant's identity to only that of a student (and not a worker, for example). As Chapter 2 detailed, the student migrant faces certain constraints and disadvantages as a result of being narrowly defined within the context of immigration law, creating limitations and separating them from their other identities.

The 2018 Global Compact aims to address certain aspects of this, as the first comprehensive migration framework, through creating more cohesion in all facets of migration, which should have an impact on student migration. Even though the Compact itself reiterates and affirms that the domestic jurisdiction of States still governs procedure, the findings discussed here regarding the student migrant as a multifaceted figure in international migration law should be taken into consideration for further policy development, and reflected more accurately in immigration regulations.

If Chapter 2 contextualized student migrants against the backdrop of laws, regulations and agreements that define and limit them, Chapter 3 expanded the role these students play in the international arena to reveal another conceptualization of the international student: that of cultural diplomat. The broadening of the concept of diplomacy has furthered the idea of citizen diplomats, or actors in the realm of international relations, and is directly applicable to the influence that international students may exert abroad. In this line, the international student has represented a means for national governments to spread their aims of cultural ideals for both the US and Europe, with some differences. In the former, by exporting the image of the US abroad in the service of foreign policy objectives, or, in the latter, by furthering the regional integration objectives of Europe, and later, by promoting a common identity connected to the strategic aims of multilateralism.

The evolutionary differences between how these roles were formulated and grew in the transatlantic sector underscored several important points. First, that inherent contradictions and tensions are manifest in both, albeit for distinct causes—be it the use of educational exchange to advance US hegemony under the guise of furthering cross-cultural interaction, or under the strains of integration in Europe in its move towards supranational identity. A common theme, though, highlights a fourth significant finding of this research: the recognition that international students are increasingly functioning as autonomous agents internationally, and that their individual goals may not coincide with the objectives of the governments or institutions they represent. If historically the international student represented a means for national governments to promote cultural ideals, the student's role has gradually been transformed into that of an individual actor operating independently in the sphere of international relations. Thus, international study and cross-border cultural relations cannot logically be wholly controlled by any agenda—be it political or educational—since it is the individual actor, the international student, who will ultimately affect the outcome.

As economic concerns began to take up increasing space in this arena, a final conceptualization of the international student emerged: as an economic driver in the field of higher education. The final chapter further addresses the inherent dichotomy between idealized cultural exchange and the increasing importance put on economic rationales for internationalization of higher education. This has been intensified more and more by the potential revenue international students can provide for institutions. The argument posits that as the ideological rhetoric of internationalization has become secondary to strategies that support economic objectives, such as heightened recruitment efforts, the international student has primarily become an instrument used for economic gain. It is here that a final contribution of this work materializes. Building off of a common conception in higher

education research literature of students as consumers, if it is the university graduate that is in fact the real product, universities should be urged to shift this economic focus. Instead of utilizing international students principally as a means of advancing the economic goals of higher education institutions, facilitating superior cross-cultural learning and interaction through improved program effectiveness should be the goal.

In closing, while these three strands of research have utilized different branches of knowledge to conceptualize the international student, taken together their findings reveal a figure that embraces diverse issues and insights. Each of the substantive chapters has further developed particular constructions of the international student to reveal fresh considerations and findings, demonstrating the importance of sussing out a wide range of perspectives when investigating the ways in which the international student is understood. Ultimately, by convening three distinct conceptions of the international student from different academic disciplines that have not yet been comprehensively treated in the context of the transatlantic sector this work has highlighted the ways in which these conceits interact, and how diverse interests depict and leverage the international student in vastly different ways. Moving forward, more effort should be directed towards allowing space for further conceptualizations of the international student in cross-disciplinary research, and encouraging a more multidimensional understanding of this figure.

ADDENDUM

In March of 2020, while in the last stages of the revision process, submission of this dissertation was put on hold as the global outbreak of COVID-19 brought the world to a standstill. As institutions of higher education across the globe ceased in-person classes and services, international students suddenly found themselves in various predicaments. Many living in on-campus residences were "forced to find a new place to live," while other students frantically tried to "get back to their home countries before flights were canceled or national governments shut down borders."[903] In the weeks and months that followed the onset of COVID-19, it has become clear that higher education and international study are facing many changes.

The most immediate and obvious consequence of this situation is that the majority of institutions across the world have had "to suspend face-to-face teaching and shift to online classes."[904] This move to virtual learning will entail new realities: "the greater shift towards more digitally enhanced learning and virtual mobility will require new investments in infrastructure," since "additional funds will be necessary for developing [the same]."[905] Consequently, students may begin to reconsider their international study options as expanded virtual learning possibilities arise. How this will affect the diverse tapestry of international student abstractions remains to be seen.

The prolonged effect of the COVID-19 pandemic "has [also] posed unprecedented challenges for all sectors of the economy, and higher education is no exception."[906] In the short term, institutions of higher education "with a larger share of income generated from fees paid by international students" will most definitely be affected by this global health crisis.[907] Many are already facing economic difficulties "compounded by pressure from students to reduce or partially reimburse fees."[908] The "financial challenges"[909] for institutions relying on admission fees from international students are expected to continue in the next few years.[910] While it is possible that "some governments may provide emergency financial support," it is likely that smaller institutions may very well have to close, or "be absorbed by larger institutions."[911] Ultimately, if global mobility declines and institutions of higher education can no longer rely on international student contributions to maintain their economic structure, and simultaneously there is more emphasis on and

[903] Federis, M. (2020) COVID-19 shakes up international student life — and university budgets. The World [Online]. Retrieved from https://www.pri.org/stories/2020-04-28/covid-19-shakes-international-student-life-and-university-budgets. Accessed May 20, 2020.
[904] Griffin, C., Kerle, A. & Haider, S.A. (2020) New schools of thought Innovative models for delivering higher education. A report by The Economist Intelligence Unit. p.6
[905] Estermann, T., Bennetot Pruvot, E., Kupriyanova, V. & Stoyanova, H. (2020) Briefing: The impact of the Covid-19 crisis on university funding in Europe - Lessons learnt from the 2008 global financial crisis. *European University Association*. p.3.
[906] Ibid. p.7
[907] Ibid. p.4
[908] Griffin et al. 2020 op. cit. p.6
[909] Ibid. p.6
[910] Estermann et al. 2020 op. cit. p.4
[911] Griffin et al. 2020 op. cit. p.6

investment in virtual learning, it is likely that other iterations of the international student will begin to emerge.

As uncertainty persists regarding "what the coming academic year will look like,"[912] it is still unclear how international students will fit into the changing higher education landscape. "Even after the coronavirus pandemic subsides, the ripple effects will have a permanent impact on higher education" since "students' exposure to online learning will have increased as a result of the outbreak, requiring higher education providers to re-think their delivery methods."[913] Families will also begin to analyze "what type of higher education provides the best value" for their money "amid what is likely to be a deep economic recession."[914] Difficulties getting flights to and from other countries as well as "challenges and delays in obtaining visas" are additional factors that "threaten" enrollment numbers. [915] In the years ahead, this will all greatly affect potential forms of mobility in higher education, and ultimately, the figure of the international student.

[912] Federis 2020 op. cit. (no pagination)
[913] Griffin et al. 2020 op. cit. p.6
[914] Ibid. p.6
[915] Ruggles, R. (2020) COVID-19 Limits Foreign Student Enrollment. Retrieved from https://www.voanews.com/student-union/covid-19-limits-foreign-student-enrollment. Accessed May 28, 2020.

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